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MILK IN THE BOSTON REGIONAL, CONNECTICUT, AND NEW YORK-NEW JERSEY MARKETING AREAS

Decision on Proposed Amendments to Marketing Agreements and Orders

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[7 CFR Parts 1001, 1002, 1015]

[Docket Nos. AO–14–A55, AO–71–A70, AO–305–A33]

MILK IN THE BOSTON REGIONAL, CONNECTICUT, AND NEW YORK-NEW JERSEY MARKETING AREAS

Decision on Proposed Amendments to Marketing Agreements and to Orders

A public hearing was held upon proposed amendments to the marketing agreements and the orders regulating the handling of milk in the Boston Regional, Connecticut and New York-New Jersey marketing areas. The hearing was held, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice (7 CFR Part 900), at Auburn, Massachusetts, on November 11–19, 1974, and at Worcester, Massachusetts, on November 20, 1974, pursuant to notice thereof issued on October 15, 1974 (39 FR 37491).

Upon the basis of the evidence introduced at the hearing and the record thereof, the Administrator, on September, 30, 1975 (40 FR 47316), filed with the Hearing Clerk, United States Department of Agriculture, his recommended decision containing notice of the opportunity to file written exceptions thereto.

The material issues, findings and conclusions, rulings, and general findings of the recommended decision are hereby approved and adopted and are set forth in full herein, subject to the following modifications:

1. Under the heading "1. *Need for merger of orders.*":

a. Paragraph 2 is changed.

b. Paragrpah 6 is deleted and 3 new paragraphs are substituted therefor.

c. Paragraphs 21 and 22 are deleted and 5 new paragraphs are substituted therefor.

2. Under the heading "2. *Definition of plants.—Governmental agency plant.*", 5 new paragraphs are added after paragraph 10.

3. Under the heading "3. *Handler definition.*", the entire discussion is changed.

4. Under the heading "4. *Producer-handler definition.*":

a. Two new paragraphs are added after paragraph 16.

b. A new paragraph is added at the end of the discussion.

5. Under the heading "7. *Classification of producer milk on a product pounds basis.*", the entire discussion is changed.

6. Under the heading "8. *Assignment of a handler's receipts to his utilization.*", 12 new paragraphs are added at the end of the discussion.

7. Under the heading "9. *Location adjustments and direct delivery differential.*":

a. Paragraph 9 is changed.

b. Two new paragraphs are added at the end of the discussion.

8. Under the heading "10. *Point of pricing for diverted milk.*":

a. Paragraph 3 is changed.

b. Two new paragraphs are added after paragraph 13.

c. Two new paragraphs are added at the end of the discussion.

9. Under the heading "11. *The Connecticut order differential.*":

a. Paragraphs 1, 13 and 15 are changed.

b. Paragraph 12 is deleted and 5 new paragraphs are substituted therefor.

c. A new paragraph is added at the end of the discussion.

10. Under the heading "12. *Pricing adulterated milk.*":

a. Paragraph 25 is changed.

b. Three new paragraphs are added after paragraph 29.

c. Two new paragraphs are added at the end of the discussion.

11. Under the heading "15. *Rate of marketing service deduction.*", a new paragraph is added at the end of the discussion.

The material issues on the record of the hearing relate to:

1. Whether the marketing areas of the Boston Regional and Connecticut orders should be included under one order.
2. Definition of plants.
3. Handler definition.
4. Producer-handler definition.
5. Definition of dairy farmer for other markets.
6. Definition of pool milk.
7. Classification of producer milk on a product pounds basis.
8. Assignment of a handler's receipts to his utilization.
9. Location adjustments and direct delivery differential.
10. Point of pricing for diverted milk.
11. The Connecticut order differential.
12. Pricing adulterated milk.
13. Charges on overdue accounts.
14. Settlement of payment errors.
15. Rate of marketing service deduction.
16. Increasing the producer-settlement fund reserve.
17. Handler reports.
18. Merger of the administrative expense, marketing service and producer-settlement funds.
19. Changes to be made in the New York-New Jersey order as a result of amendments to the Boston Regional and Connecticut orders.

Findings and Conclusions

The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof:

1. *Need for merger of orders.* Marketing conditions in the present Boston Regional and Connecticut marketing areas justify the issuance of a single order regulating the handling of milk in these areas. This single "New England" order is the most appropriate means of effectuating the declared policy of the Act.

The merger of the Boston[1] and Connecticut orders was proposed by eight cooperative associations that market milk in the regulated areas. The members of these producer groups constitute about 80 percent of the producers on the Boston market and about 87 percent of the producers supplying the Connecticut market. From the exceptions filed to the recommended decision, however, it is noted that one of the cooperatives has since withdrawn its initial support for the merger.

In summary, proponents of the merger contended that changes in marketing practices in recent years have caused the two regulated areas to become so interrelated in both the procurement and distribution of milk as to constitute a single market for producers. They stated that there is a substantial overlapping of sales areas of handlers under the two orders as well as intermarket movements of bulk milk. The cooperatives pointed out that the milk supplies for the two regulated areas are being procured essentially from a common milkshed. Proponents indicated that a single-market approach is commonly used by them in the marketing of their members' milk. Marketing efficiencies, they claimed, are not fully achievable, however, because of the existence of separate orders for areas that are now a single market.

Proponents also pointed to the widely differing blended prices under the Boston and Connecticut orders and contended that this situation creates considerable unrest among producers in the common milkshed, with attendant procurement and marketing problems for handlers and cooperatives. The cooperatives indicated that although reblending practices in the New England area are lessening the impact of the blended price differences, the market stresses that they cause can be removed only through order consolidation.

The proposed merger was supported at the hearing by a Vermont farm organization that claimed it represented over 90 percent of the dairymen in the State. Support also was expressed by the Departments of Agriculture for the States of Vermont and New Hampshire.

The only opposition at the hearing to the proposed merger was by a Connecticut handler organization. This group contended that a merger of the two orders could jeopardize the availability of milk supplies for Connecticut handlers. It was their position that the lower returns that Connecticut producers presumably would get under the merger would not induce sufficient local production for the Connecticut segment of the proposed New England market. The handlers claimed that the present higher blended price level under the separate Connecticut order is particularly necessary with the more costly health regulations that are applicable to producers on the Connecticut market. Handlers reemphasized this point in their exceptions, claiming that the Department, in recommending the merger, overlooked the differences in health regulations applicable in Connecticut

[1] For convenience purposes, references throughout the decision to the Boston Regional market are expressed in terms of the Boston order or the Boston market.

relative to those for other parts of the proposed market.

Opposition to the merger was expressed by other parties in their exceptions to the recommended decision. The Department of Agriculture for the State of Connecticut indicated that the proposed merger is not in the best interests of Connecticut dairy farmers. It pointed out that this merger most likely would be followed later by a merger of all northeastern orders and that this would lead to the eventual demise of dairy farmers in Connecticut. Although no reason was given for his position, one such dairy farmer filed an exception in opposition to the proposed merger.

Opposition was expressed also by one of the cooperatives that initially proposed the merger. In its exceptions, the cooperative noted that while the merger of the Connecticut and Boston orders is desirable it should not take place as long as the present State of Connecticut health regulations pertaining to dairying continue to exist. Such regulations, the cooperative contended, are more stringent than those applicable in other New England States, with producers supplying Connecticut handlers being required to have their herds tested annually for tuberculosis versus such testing only once every three years for other producers. The cooperative indicated that it has borne this additional cost for its members, doing so willingly as long as the higher blended price for the Connecticut market, relative to the Boston market, compensates the cooperative for this expense. The cooperative contended, however, that with the dissipation of the higher blended price under the merger the cooperative, in essence, will be "locked out" of the Connecticut segment of the proposed New England market since it no longer would be able to recover the extra testing cost through this means.

On the basis of the findings herein, it is concluded that the Boston and Connecticut markets are no longer separate and distinct markets for milk. Changes in marketing practices in recent years have caused the separately-regulated areas to become, in essence, a single market for a large segment of dairy farmers associated with the New England area. It is reasonable to expect that the interrelationship of the present order areas will become even more pronounced in the future.

Fluid milk products processed and packaged in one market are now commonly distributed in the other market. Such sales are regularly made in the Boston marketing area by nine Connecticut order handlers, while four handlers under the Boston order distribute milk in the Connecticut market. In both cases, such handlers include the largest distributor regulated under each order.

During September 1974, which is representative of the current marketing situation in New England, handlers under the Connecticut order distributed 12.7 million pounds of packaged fluid milk products on routes in the Boston marketing area. An additional 1.1 million pounds of Class I milk were sold to handlers under the Boston order in bulk and packaged form. At the same time, handlers in the Boston market distributed 1.3 million pounds on routes in the Connecticut marketing area, with another 0.2 million pounds of packaged and bulk Class I milk being moved to Connecticut order plants. Thus, about 6 percent of the 244 million pounds of producer receipts used in Class I in the two markets that month was involved in the intermarket competition for fluid milk sales.

It is recognized that compared with the total volume of milk distributed in each market the intermarket sales are perhaps relatively small and may not in themselves constitute a strong basis for merging the Connecticut and Boston orders. Nevertheless, the present competition between handlers regulated under the two orders indicates that separate markets for the producers supplying these handlers are not clearly distinguishable. This, of course, raises the question of whether the pooling of milk under separate orders, with widely differing blended prices to producers, represents an equitable marketing arrangement for those producers associated with the New England area.

The single-market character of the New England area is probably more pronounced in terms of the supply arrangements for the area. Milk supplies for the individual markets are being drawn from broadly overlapping procurement areas. In December 1973, for example, handlers under the two orders received milk from producers located in an estimated 80 counties in seven northeastern states. About one-third of these counties were a source of milk for both markets.

With the exception of the Maine production, which is entirely associated with the Boston market, milk production in each of the other six northeastern states contributes to the milk supply for both the Connecticut and Boston markets. In September 1974, 69 percent of the milk supply for handlers in the Boston market came from producers in Massachusetts, Rhode Island, Vermont and New Hampshire. About 24 percent of the supply for Connecticut handlers came from this four-state area. Of this total supply in the four-state area, 12 percent was pooled under the Connecticut order and 88 percent under the Boston order in that month.

Both markets rely significantly on a common production area in eastern New York. Handlers under the Boston order received 20 percent of their milk supply and Connecticut handlers received 39 percent of their supply from that area in September 1974. Of this New York production, 56 percent was priced under the Boston order and 44 percent under the Connecticut order.

Producers located in Connecticut supplied 37 percent of the producer milk received by handlers under the Connecticut order and slightly under 3 percent of the milk for handlers in the Boston market. Of the total production in Connecticut associated with the two markets, 86 percent was pooled under the Connecticut order in September 1974. The remainder was pooled under the Boston order.

These data indicate the overlapping character of the production areas for markets currently regulated under separate orders. Under the two orders, however, the prices payable to producers usually differ significantly. In recent years, producers in the Connecticut market have received blended prices averaging from 24 to 34 cents per hundredweight annually above such prices received by producers in the Boston market. In 1974, the blended prices in one month differed by 60 cents, although this has not been the usual case.[2]

The reasons for such price differences are basically twofold. The number of producers associated with the Connecticut market generally has been limited to the number required for supplying essentially just the Class I needs of the market. This has been the result of the regulations of the State of Connecticut that govern the granting of health permits to dairy farmers who wish to ship milk to plants eligible to distribute Class I milk within the State. Because of this institutional arrangement, the higher blended prices under the Connecticut order have not attracted the additional milk supplies that would tend to equalize producer returns as between the Connecticut and Boston markets.

A second factor is the historical association of relatively large quantities of reserve milk supplies with the Boston market. This can be attributed in large part to the supply arrangements in that market. Much of the milk obtained for fluid use is accumulated at supply plants in the northern areas of New England and New York and shipped to distributing plants in Massachusetts and Rhode Island for processing. Milk in the distant areas that is not needed by the distributing plants is retained in those areas for manufacturing. Because of the very substantial demand for Class I milk in the Boston market, numerous supply plants are able to maintain pool plant status under the Boston order. Given the same pooling standards, much more milk can be pooled in a market where there are supply plants than in a market where the milk supply is moved directly from farms to distributing plants, as in the Connecticut market. No supply plants are qualified on the basis of only plant shipments under the Connecticut order.

The widely differing producer prices tend to be a disruptive element in the marketplace for producers, cooperatives and handlers. Producers normally seek, of course, the most remunerative outlet for their milk. Prolonged price differences between markets create much dissatis-

[2] Official notice is taken of the Market Administrator's 1974 annual statistical report, "Milk Market Statistics," that was issued in March 1975 for the Connecticut market and in April 1975 for the Boston Regional market.

faction among the producers receiving the lower prices. Attempts by producers to maximize their returns have a disturbing impact on the procurement and marketing programs of both handlers and cooperative associations.

Through recent actions by New England cooperatives, the New England area already represents, in essence, a single market for a very substantial number of producers. In July 1972, the largest cooperative in the Connecticut market merged with the two largest cooperatives in the Boston market. The new organization markets approximately 75 percent of the milk pooled under the Connecticut order and 50 percent of the milk regulated by the Boston order. Also, this cooperative and two others with members on both the Boston and Connecticut markets are each reblending among their members the proceeds from milk marketed under each order. Together, the three cooperatives represent more than 60 percent of the producer milk now being priced under the two New England orders. Through this reblending procedure, cooperatives are attempting to minimize the disruptive influences emanating from the widely differing blended prices.

In view of all of the above circumstances, a single marketwide pool order should be adopted for the now separately regulated New England areas. Such an order is the most reasonable means of minimizing the economic stresses, price uncertainties and marketing instability now existing in the New England area.

As previously indicated, Connecticut handlers opposed the proposed merger on the basis that this could jeopardize the availability of milk supplies for handlers in that State. It is recognized that the blended prices under the merged order will be somewhat lower because of the lower Class I utilization than the blended prices under the present Connecticut order. However, the impact of this on individual Connecticut producers will be limited since much of the milk on the Connecticut market is already subject to reblending by cooperatives with milk pooled on the Boston market. Whether there will be a significant drop in the production of the remaining producers who are still being paid the Connecticut order blended price is unknown. Nevertheless, milk supplies now associated with the New England area should be more than adequate for meeting the Class I needs of all handlers under the merged order. In 1974, only 63 percent of the producer milk under the Boston and Connecticut orders combined was used in Class I.

Connecticut handlers contend that much of this milk supply is not available to them because it does not have Connecticut health approval. While this may be so, Connecticut handlers have been able, in fact, to obtain the milk supplies necessary for their operations. The merger should not change this situation. As pointed out earlier, a significant portion of the supply for the Connecticut market comes from the State of New York. Even under the merger, Connecticut handlers will continue to have a competitive advantage relative to New York handlers in the procurement of milk in that area. (This is discussed further under Issue 9.) The granting of the necessary Connecticut health approval to New York producers is, of course, outside the scope of the Federal order. However, the higher returns available to New York producers shipping to Connecticut handlers would be expected to offset any additional health inspection costs that the producers might incur.

The attraction of milk to various plant locations is basically dependent upon the Class I price applicable at those locations. The appropriate Class I price level at Connecticut plants is discussed under Issue 9.

As noted previously, a cooperative also cited the more stringent Connecticut health regulations as a basis for not merging the two orders. The cooperative's arguments that it would be economically "locked out" of the Connecticut market, however, are not compelling. Whether or not it would be economically desirable to ship to Connecticut handlers after a merger is a decision that the cooperative has to make. If it chooses not to supply Connecticut handlers, it presumably has a more remunerative outlet elsewhere for the milk of its members. On the other hand, the maintenance of Connecticut health approval may represent the best option for the cooperative. The merger should not be forestalled, however, simply to help protect certain outlets for the cooperative.

It is conjecture, of course, as to whether the proposed marger will lead to the demise of Connecticut dairy farmers, as suggested by the State of Connecticut. No basis was set forth by the State in support of its position, and further consideration of this point is unnecessary.

The cooperatives proposing the merger of the Boston and Connecticut orders urged that the merged order continue the provisions of the Boston order except for certain modifications. The order adopted herein generally carries out this concept. The Boston order provisions in general have been appropriate for achieving the ends sought by the regulatory plan for the Boston market. Many of these provisions are essentially the same as corresponding provisions of the Connecticut order. Moreover, no new territory would be added to the combined marketing areas, nor would the merger result in the regulation of any additional plants. On the basis of the hearing evidence, it is found that the Boston order provisions, with certain modifications, will be appropriate for achieving orderly marketing conditions in the proposed New England marketing area. Therefore, the remainder of this decision deals only with the modification of the present Boston order provisions.

The order adopted herein for the "New England" marketing area would amend and merge the Boston and Connecticut orders. The merged order would continue the use of the part number of the present Boston order, Part 1001. The amended Part 1001, upon its effectuation, would supersede Part 1015.

The merged order regroups and recodifies the provisions of the present Boston order. The regrouping of certain provisions in conjunction with the redesignation of some section numbers will result in a more compact order and a more precise grouping of related order provisions. No substantive change is made in any order provision as a result of this recodification.

Although the present two orders no longer would exist upon effectuation of the New England order, this merger is not intended to preclude the completion of those procedures that would otherwise have existed under the separate orders with respect to milk handled prior to the effective date of the merger. Such procedures, which would need to be carried out after the merger date, include the announcement of certain prices, submission of reports, computation of blended prices, payment of obligations, and verification activities. The provisions of the merged order would apply to that milk handled after the effective date of the merged order.

2. *Definition of plants.—Supply plant.* The Boston order provisions concerning the pooling of a handler's system of supply plants should be modified. Presently, one or more supply plants of a cooperative plus the group of producers for whom the cooperative is acting as a bulk tank handler may constitute a "system" for purposes of determining which milk shall be pooled. In determining the system's qualifying shipments for pooling eligibility, recognition is given to the deliveries of milk directly from the farm to distributing plants by the cooperative in its capacity as a bulk tank handler. However, such qualifying deliveries are now limited to those made to distributing plants of other handlers. The merger proponents asked that bulk tank deliveries to a cooperative's own distributing plant also count as qualifying shipments in determining the system's eligibility for pooling.

The proposal should be adopted. This will recognize a current situation where a New England cooperative is operating both a supply plant and a distributing plant and is acting as a handler on farm bulk tank milk that it moves from farms to its distributing plant. The present system pooling provisions recognize that it is often more efficient to move bulk tank milk directly from the farm to a distributing plant than through the supply plant with which it otherwise normally would be associated. However, unless the direct-ship milk is counted as a part of the supply plant's qualifying shipments, the supply plant may be unable to meet the shipping requirements for pooling although it historically has had a bona fide association with the market. With this as the underlying basis for such a pooling arrangement, it appears reasonable for purposes of pool qualification that no distinction be made as to whether the cooperative's direct-ship milk is moved to its own distributing plants or to those of other handlers.

The Boston order now exempts a supply plant that qualifies for pooling under

both the Boston order and another Federal order. As urged by the merger proponents, the merged order should not preclude pool status for the plant if it has greater qualifying shipments to the New England market than it has to the other market. In most cases, this will result in the pooling of the plant in the market with which it has the greater association.

The New York-New Jersey order prescribes that a supply plant that qualifies as a "regular" pool plant under that order shall be pooled in that market even though the plant for a time may have greater shipments to another market. As suggested by proponents, it is appropriate to recognize this under the New England order, thereby avoiding an administrative conflict as to where the plant shall be pooled.

The hearing notice listed a proposed modification of the provisions that now permit a supply plant to have "automatic" pool plant status during the months of December through June. Presently, such status would be granted if the plant was a pool supply plant in New England in at least two of the preceding months of July through November and would have been such a pool plant in all other months in that period had it not been a pool plant under the New York-New Jersey order. As noticed, the two-month requirement would be changed to three months.

No testimony concerning this proposal was presented at the hearing. Accordingly, no action is taken on the proposal.

The pooling standards for supply plants should not be changed to count transfers of fluid milk products to producer-handlers as a part of the supply plant's qualifying shipments for pooling.

This pooling standard is now provided under the Connecticut order and cooperatives urged its inclusion in the merged order. In support of their proposal, proponents indicated that when a supply plant transfers milk to a producer-handler it is supplying part of the fluid milk needs of the market in the same manner as when shipments are made to pool distributing plants. Proponents therefore urged that these shipments be considered as a part of the supply plant's qualifying shipments for pooling.

Supply plant pooling standards are intended to assure that supply plants associated with the market will make milk available to pool distributing plants for fluid use. The inclusion of transfers to producer-handlers in a supply plant's qualifying shipments would not be consistent with the purpose of such pooling standards and should not be adopted. This, of course, would not preclude the transfer of milk from a supply plant to a producer-handler. Such transfer, however, would be in addition to the minimum shipments which must be made to pool distributing plants.

Although the proposed pooling standard is now in the Connecticut order, its exclusion from the merged order will have no impact on plants now pooled under that order. No supply plants are currently pooled in the Connecticut market on the basis of plant shipments.

Cooperative association plant. The procedure now used for pooling a cooperative association balancing plant under the Boston order should be continued under the merged order.

The present Boston order provides that any plant that is operated by a cooperative and located in the marketing area shall be a pool plant in any month in which its route disposition does not exceed two percent of its total receipts of fluid milk products. Three plants are now being pooled under the cooperative association plant provisions of that order. Two are Massachusetts plants—one at West Springfield and the other at Andover. A third plant is located at Providence, Rhode Island.

The Connecticut order, on the other hand, provides that a cooperative association may pool a supply plant (the plant located nearest Hartford if the cooperative operates more than one plant) on the basis of the cooperative's deliveries of member milk to pool plants in the market. A plant at Newington, Connecticut, is pooled on this basis. Even though the Newington plant qualifies as a supply plant under the Connecticut order, it serves a balancing function for that market.

The three plants now being pooled under the Boston order were established initially to service the then local and separate Lowell-Lawrence, Springfield and Southeastern New England markets. These plants and the Connecticut plant in combination provide substantial manufacturing capacity where milk primarily from local producers, whenever not needed by fluid milk handlers, is received and manufactured. The plants also have storage capacity and serve a function of filling unanticipated additional handler needs for milk.

The merger proponents proposed that pooling eligibility as a balancing plant under the merged order be limited to those plants located in the "nearby plant" pricing zone, rather than to plants located within the marketing area. The nearby plant zone adopted herein would include the States of Massachusetts (except Berkshire County), Rhode Island and Connecticut. The present marketing areas of the two orders cover essentially this area plus additional area in the southern parts of New Hampshire and Vermont.

All four of the plants now pooled under the present orders as balancing plants are located in the adopted nearby plant zone. While the cooperatives' proposal would not affect the pooling status of these plants, the record does not demonstrate a need for its adoption. No particular marketing problems were suggested by proponents in support of their proposal. The proposal is therefore denied.

Regulated plant under another Federal order. The merged order should define a "regulated plant under another Federal order" as a pool plant under another Federal order or any other plant at which all fluid milk products handled become subject to the classification and pricing provisions of another Federal order.

Such a definition is now contained in essentially this form in both the Boston and Connecticut orders. The definition facilitates the drafting of various order provisions, such as those defining certain types of plants and those relating to the classification of milk moved either to or from certain plants. Cooperatives proposed that this definition be continued under the merged order but that it include, as in the Connecticut order, a pool bulk tank unit under another Federal order. Proponents claimed that this is necessary to coordinate the provisions of the merged order with those of the New York-New Jersey order, which provides for pool bulk tank units.

Although such coordination is necessary, it is more appropriate to accommodate this matter in other provisions of the order rather than in the definition of "regulated plant under another Federal order." Special reference to receipts from a pool bulk tank unit under another Federal order is provided in the "pool milk" definition and in the provisions setting forth the procedure for assigning a handler's receipts to his classes of utilization.

Governmental agency plant. A plant that is operated by a governmental agency and has Class I route disposition in the marketing area should be exempt from regulation under the merged order. For purposes of the order, such a plant should be defined as another type of exempt distributing plant.

Fluid milk products that are transferred or diverted from a pool plant to such an exempt distributing plant should be considered as Class I disposition of the pool handler. Receipts of fluid milk products at a pool plant from an exempt governmental agency plant should be assigned to the pool plant's Class II utilization.

Such provisions will permit the processing plant of the University of Connecticut to remain exempt from order regulation. The plant now has exempt status under the Connecticut order. No similar exemption for governmental agency plants is provided under the Boston order.

The cooperatives advocating the order merger proposed that no special exemption from regulation be accorded a plant by virtue of it being operated by a governmental agency. Proponents offered no evidence relative to the issue of regulating the University's plant but merely took the position that the "broad" exemption under the Connecticut order should not be continued.

The University of Connecticut, on the other hand, urged the continuation of the exempt status for its plant. The University claimed that regulation of its plant would interfere with its research and teaching program in dairy technology. It contended that its plant operation was not typical of commercial dairy

operations and should not be subject to the pooling provisions of the order.

The primary function of the University of Connecticut plant is to serve as a teaching, research, and demonstration facility for students. The plant also is used for the processing of fluid milk products for consumption at campus dining halls and at two State of Connecticut correctional institutions. Limited quantities of milk and milk products also are disposed of through a store operated in the University's plant. The milk processed at the plant is received from the University's farm, one of the State institutions and a cooperative association.

A description of the plant's operations was provided at the hearing by a University staff member. During a recent 12-month period, 6 million pounds of raw milk were received at such plant. Nine percent (0.6 million pounds) was produced by the University's own dairy herd, 45 percent (2.7 million pounds) was produced by the dairy herd of one of the correctional institutions, and the remaining 46 percent (slightly over 2.7 million pounds) was purchased from the cooperative association.

Of the total milk processed, about 88 percent (5.3 million pounds) was disposed of for fluid use. The major portion of this went to the correctional institutions and to campus dining halls. About 360,000 pounds of Class I milk were sold through the plant store. The remainder of the plant's receipts (0.7 million pounds) was processed into Class II products, such as ice cream, sour cream, and cottage cheese.

The maintenance of orderly marketing conditions in the New England area does not require the regulation of this State-operated plant. Except for the retail sales through the plant store, which is open to the public, all of the milk processed at the plant is consumed at State-operated facilities. The average monthly volume of Class I milk sold through the store is 30,000 pounds. No evidence was presented to indicate that these sales are causing serious competitive problems for regulated handlers and thus are a disruptive factor in the market. The operations of the plant are not in the nature of the operations of proprietary handlers whose regulation is essential to effectuate the intent of the Act. Rather, they are for the purpose of advancing the recognized functions of the State in the public interest. Accordingly, a continuation of the exemption is appropriate.

Although this exemption is provided to cover the University of Connecticut plant, the exemption is not intended to be limited to just this plant. Other governmental agency plants serving the public interest likewise should be exempt from regulation under the merged order.

In his exceptions to the recommended decision, the operator of a pool distributing plant contended that no special exemption should be granted Federal or state governments or colleges, claiming that such an exemption would be discriminatory. Aside from whether or not this is a valid characterization of the exemption, we cannot conclude that fully regulated handlers will be economically harmed by the exemption being granted here. The nature of the University of Connecticut plant operation is not such as to require its full regulation under the order.

Another handler, while not opposing the exemption per se, indicated in his exceptions that under the applicable provisions set forth in the recommended decision the exemption for a governmental agency plant would be "too broad in scope." The handler pointed out that such a plant could receive milk from dairy farmers, producers-handlers or unregulated plants without affecting its exempt status. Also, it was noted that there would be no limitation on the plant's route distribution, either in terms of quantity or in terms of milk sold to the public.

The record does not portray a need at this time for any of the limitations suggested by the exceptor. The only known plant that will qualify for this exemption is the University of Connecticut plant. The suggested limitations have not been applicable under the Connecticut order, and from the past experience of this plant operation such limitations appear unnecessary under the merged order.

It is appropriate, however, to modify the recommended decision with respect to deliveries of milk to a pool plant from the farm of a governmental agency that is operating an exempt plant. Under the Connecticut order, such deliveries are presently assigned to the pool plant's Class II utilization. Under the recommended decision, such assignment would apply only to milk transferred from the agency's plant, and not from the agency's farms as well. The Connecticut classification procedure now applicable to the farm deliveries should be continued under the merged order.

Unless this arrangement is continued, milk production that is in excess of the agency's needs could be delivered to pool plants as producer milk and share in the Class I utilization of the market. This would represent an inequitable situation for producers regularly supplying the market. They would be burdened with the agency's surplus milk without being able to share in the Class I disposition of the agency's plant.

The present classification of transfers and diversions of fluid milk products from a pool plant to an exempt governmental agency plant should be modified somewhat under the merged order. Under the Connecticut order, such transfers or diversions may be classified as Class II milk if the buyer and seller both agree on such classification, the pool handler reports such classification to the market administrator, and the governmental agency certifies that such milk was used to produce Class II products. Under the merger, all movements of fluid milk products from pool plants to a governmental agency plant should be classified as a Class I disposition.

This special purchasing arrangement whereby the University of Connecticut is able to buy bulk milk from a pool handler under certification for Class II purposes was provided in the Connecticut order to accommodate the particular circumstances with respect to the fluid milk operations of the University. Because of the limited volume of milk purchased for Class II use by the University and the circumstances involved in such purchases, the accommodation of such procurement arrangement under the terms of the order was considered to be appropriate.

With the merger of the two orders at this time, additional plants operated by governmental agencies could qualify for exemption. The record does not provide information with respect to the location, size, and scale of any other such operations. Providing exempt status for any plant operator with significant Class I sales in the marketing area and at the same time permitting him to purchase pool milk for other than Class I use could seriously undermine the integrity of regulation. The record establishes no compelling need for the continuation of the privilege of purchasing pool milk for Class II use now enjoyed by the University. Under the circumstances, it must be concluded in the interest of equity that exempt governmental agencies should not be permitted to purchase pool milk other than for Class I purposes.

3. *Handler definition.* The merged order should continue the provisions of the Boston order that require a cooperative to be the handler for bulk tank milk that it moves from farms to pool plants or diverts to nonpool plants. However, as under the present Connecticut order, this requirement should apply to the milk of both members and nonmembers that the cooperative picks up at the farm, and not just to its member milk. In either case, the operator of the pool plant to which the milk is moved should be permitted to be the accountable handler for such milk upon mutual agreement between the cooperative and the plant operator. This would be under the condition that the plant operator purchases such milk on the basis of farm weights and tests.

The merged order should afford all cooperatives in the market flexibility in the arrangements under which they sell milk to pool plants or dispose of reserve supplies. If it so chooses, a cooperative should be able to pick up the milk of nonmember producers along with the milk of its members for delivery to a pool plant or for diversion to nonpool plants.

In doing so, it should be able to act as the marketing agent for a nonmember producer and market the milk and collect payments for it in accordance with the arrangements between the cooperative and the nonmember. The cooperative also should be able to act merely as the hauling agent with respect to the nonmember's milk. These handling arrangements would be consistent with the Capper-Volstead Act, the statutory authority for cooperative associations, which provides that cooperatives may "deal in the products of nonmembers" but limits such dealings to amounts not

greater in value than as are "handled by it for members."

It is necessary under the order, however, to require a cooperative that is handling milk of nonmember producers to assume varying degrees of responsibility for the milk, depending on the handling arrangements made. If the cooperative picks up nonmember milk at the farm in trucks under its control, it must be the handler that accounts for the milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples. Only when the operator of the pool plant to which the milk is moved agrees to assume such accountability for the milk can the cooperative be relieved of its handler capacity for the nonmember milk. When the milk of any producer is commingled in a tank truck with that of other producers, the identity of the individual producer's milk is lost. The amount of the producer's milk in the truck and the butterfat content thereof can be determined only from measurement of the milk at the farm and from milk samples taken from the farm tank. After the milk has been pumped from the individual producer's farm tank into the tank truck of the hauler and commingled with the milk of other producers, there is no opportunity to measure, sample or reject the milk of an individual producer. Thus, when a cooperative is picking up the milk of nonmembers at the farm, irrespective of the handling arrangement with the nonmember, it is only the cooperative that has the opportunity to measure and sample the milk of the individual nonmembers that is delivered to a pool plant. In the absence of any agreement by the plant operator to be the handler for the milk, with the attendant accountability at farm weights and tests, the cooperative necessarily must be the responsible handler for the milk as it leaves the farm. Such responsibility should not be forced on the plant operator who has no control over the measuring and sampling of the milk at the time it is picked up at the farm.

A handler operating pool plants under both the Boston and Connecticut orders opposed any provisions that would require a cooperative to be the bulk tank handler for milk of nonmember producers. The handler, who receives milk from members and nonmembers, contended that such provisions would result in cooperatives gaining control of nonmembers' milk. The handler indicated that this in turn would provide an incentive for such producers to become members of a cooperative association.

Whether or not the proposed handler definition would tend to foster membership in cooperatives is not an overriding factor in the consideration of this issue. A producer will become a cooperative association member only when he chooses to do so. He is free to join or not to join. He also is free to remain a nonmember but have a cooperative market his milk if the cooperative elects to operate in this manner. At the same time, the adopted order provisions in no way would compel him to market his milk through a cooperative association.

In opposing the adopted provisions, the handler stressed in his exceptions to the recommended decision that such provisions would provide less flexibility in the handling arrangements for nonmember milk than now exists under the Boston order. Under the revised handler definition, it was contended, the nonmember milk that is hauled by a cooperative would always be treated as producer milk of the cooperative and the nonmember would have to look to the cooperative, rather than the plant operator, for payment for the milk.

This is not the intent of the revised handler definition. It is presumed that if the cooperative is merely hauling the nonmember's milk, and not marketing it, the plant operator, by mutual agreement with the cooperative, will elect to be the accountable handler for the milk and thus will be the handler responsible for paying the nonmember. This presumably would be the case when a cooperative delivers to the pool plant the milk of one or two nonmembers on the same truck containing member milk for which the cooperative is the accountable handler. Only in those circumstances where there is not a mutual agreement for the plant operator to be the accountable handler would the cooperative be the handler responsible for the full accounting for the milk and payment therefor.

As indicated, the Connecticut order requires a cooperative to be a bulk tank handler for nonmember milk in the same manner as provided herein. The inclusion of such provisions in that order has not caused any problems. It is anticipated that such provisions will not create problems for handlers operating under the merged order.

In his exceptions, the handler also raised several questions regarding the contractual relationship of a nonmember with a cooperative association that is marketing his milk. If the nonmember producer has signed a contract with the cooperative authorizing it to market his milk and collect payments therefor, the cooperative may pay the nonmember in accordance with the contract. The contractual arrangement, which may differ from member contracts, may include reblending and deductions for such things as marketing services. If such marketing functions occur in the absence of a written contract, the cooperative would be required to pay the nonmember producer not less than the prices prescribed by the order.

4. *Producer-handler definition.* The producer-handler definition in the merged order should be essentially the same as that now contained in the Boston order. However, the size limitation on producer-handlers who may purchase unlimited quantities of milk by transfer from pool plants should be modified. In this respect, such persons whose production or route disposition does not exceed a daily average of 2,000 quarts during the month should be permitted to buy unlimited amounts of supplemental milk from pool plants without affecting their producer-handler status. Producer-handlers with production and fluid milk sales each averaging more than 2,000 quarts per day should be limited to purchases from pool plants of not more than 2 percent of their own production.

The producer-handler definitions of the Boston and Connecticut orders differ basically in only one respect. The Boston order permits unlimited purchases of milk from New England pool plants only in the case of producer-handlers with average production or fluid sales of not more than 1,000 quarts per day. Purchases of such milk by larger producer-handlers are limited to 2 percent of their own production. The Connecticut order places no restriction on the amount of milk a producer-handler may purchase from pool plants.

The merger proponents supported a continuation of the Boston producer-handler provisions. They contended that a producer-handler who produces and distributes more than 1,000 quarts per day basically should balance his production with his fluid needs and not rely upon pool plants for supplemental milk supplies. Otherwise, they claimed, he is relying upon other producers whose milk is pooled to bear the burden of carrying the necessary reserve supply associated with his business without such producers sharing in the returns from his sales of Class I milk.

Several producer-handlers and a representative of the Massachusetts Farm Bureau testified in support of a continuation of the Connecticut producer-handler definition. They were concerned primarily with the proposed 2 percent limitation on supplemental purchases by the larger producer-handlers. They contended that seasonal changes in milk production necessitate balancing their production with purchases of milk from pool plants. The 2 percent limitation, they claimed, would greatly reduce the balancing flexibility they now have. Also, it was claimed that the application of the Boston provisions to Connecticut producer-handlers would require drastic changes in the operations of such persons who are now purchasing substantial quantities of milk from pool plants, a practice now permitted under the Connecticut order. These parties contended that producer-handlers are not causing disorderly conditions in the New England area. They took the position that a merger of the New England orders does not require the adoption of the more restrictive producer-handler provisions now applicable in the Boston market.

Typically, a producer-handler conducts a relatively small, family-type operation in which he processes, packages, and distributes only the milk produced on his own farm. Full regulation of such operations usually results in considerable difficulty in administering the provisions of an order. For this reason, it has been customary under Federal orders, including those in New England, to exempt producer-handlers from the pooling and pricing provisions of the orders.

Such exemption has been feasible because such businesses are usually so small that their exemption does not undermine the effectiveness of the regulatory program.

To assure that the exemption of producer-handlers does not have an adverse impact on the market, it has been found necessary under the order program to require such persons to operate basically in a self-sufficient manner. This entails relying primarily on their own milk production and assuming the burden of maintaining the reserve production needed to balance their fluid sales, which includes disposing of any daily or seasonal surpluses they may produce, usually at surplus prices. Under this concept, it is appropriate to preclude producer-handlers from purchasing milk from other dairy farmers. Otherwise, such processors would be indistinguishable from regulated handlers who customarily obtain milk from producers. In some circumstances, however, producer-handlers are allowed to purchase supplemental supplies of Class I milk from regulated plants. In some markets such purchases are restricted, with such limitations having been imposed because of special circumstances in the market.

It is within this conceptual framework that the present producer-handler issue must be considered.

In dealing with this issue, it must be recognized that the current provisions of the two orders were developed in response to the particular conditions existing in the respective markets. In the Boston market, there historically has been a large number of producer-handlers, including some of very substantial size. It was found appropriate under these circumstances to require the larger producer-handlers to be almost totally self-sufficient with respect to their supply of milk. Only in this way could there be any reasonable assurance that their exemption would not threaten the stability of the order program for that area. The producer-handler provisions of the Boston order have accommodated both the large and small producer-handler operations in a manner consistent with the needs of the regulatory program.

In the Connecticut market, producer-handlers have not created major competitive problems for regulated handlers, in part because the operations of producer-handlers were of limited size. In March 1974, there were only five Connecticut producer-handlers whose production was above 1,000 quarts per day. In the Boston market, there were 10 such operations. Also, at that time, there were four producer-handlers under the two orders whose production averaged more than 3,000 quarts per day. Only one of these was a Connecticut producer-handler. Under the circumstances, it has not been necessary in the Connecticut market to impose stringent limitations on the amount of milk that producer-handlers may purchase from pool plants.

A consolidation of the two orders requires, of course, a resolution of the differences in the present producer-handler definitions. In this regard, it is concluded that at least in the case of the larger producer-handlers the concept of self-sufficiency must be an overriding consideration. With no restrictions on supplemental purchases by the larger producer-handlers, there would be an opportunity for such individuals to become a serious competitive factor for other handlers in the market on whom full regulation is imposed. They could do this without carrying the burden of balancing their production with their distribution needs and without sharing their Class I sales with other producers. Also, allowing such purchases without limit could provide an incentive for regulated handlers with own farm production to seek status as producer-handlers.

The present Boston marketing area will represent a very substantial portion of the merged marketing area. In formulating an order for the merged market, the past experience in the Boston market with respect to producer-handlers is compelling. The concept of self-sufficiency with respect to the operations of those producer-handlers of sufficient size to be a competitive factor in the market must be preserved in the interest of equity and continuing orderly marketing.

At the same time, the record does not support the application of the restrictive purchasing provisions to the smaller producer-handlers in the manner proposed by the cooperatives. The position of producer-handlers in the individual markets has declined over the years. In 1965, there were 44 producer-handlers under the Connecticut order, as compared with 13 such persons in that market for 1974. Their total production decreased from 26 million pounds in 1965 to 14 million pounds in 1974. The producer-handlers' share of the total Class I sales in the Connecticut marketing area declined from 2.9 percent in 1965 to 1.7 percent in 1974.

A similar historical pattern has prevailed for the Boston market. In 1965, there were 57 producer-handlers in that market compared with 33 in 1974. The production of producer-handlers decreased from 56 million pounds in 1965 to 30 million pounds in 1974. In-area Class I sales by producer-handlers represented 2.9 percent of the total in 1965 and 1.4 percent of the total in 1974.

In view of the declining position of producer-handlers in the marketplace, and in the absence of any evidence of disorderly marketing conditions resulting from their operation, there is no basis for applying more stringent conditions for exemption to the smaller producer-handlers in the New England area.

Under the provisions adopted herein, a producer-handler whose production does not exceed a daily average of 2,000 quarts during the month would not be restricted as to his purchases of supplemental milk from pool plants. When weighed against the rather divergent provisions now applicable in the two markets, this represents a reasonable size level for delineating between the larger and smaller producer-handlers. It is recognized that the 2,000-quart limit is double the limit now applicable in the Boston market. Nevertheless, there is no reason to believe, in view of the declining position of producer-handlers generally in the respective markets, that adoption of such 2,000 quart limit will encourage expansion of producer-handler operations in the combined market.

It is anticipated that with some minor adjustments in a few producer-handler operations the adopted provisions will permit all persons now designated as producer-handlers under the individual orders to maintain their present exempt status. For the Boston segment of the combined market, such provisions will be less restrictive. In the Connecticut area, the opposite will be true. From the limited information in the record, it appears that there may be as many as four Connecticut producer-handlers whose average daily production is slightly above the 2,000 quart level and who may be making purchases in excess of the 2 percent limit. An individual in this situation will have to make a management decision as to whether he should become a fully regulated handler or retain his producer-handler status by making minor adjustments in his operation.

Producer-handlers, both individually and through producer-handler organizations, filed exceptions to the recommended treatment of producer-handlers under the merged order. The basic thrust of the exceptions was that the producer-handler provisions of the Connecticut order should be carried forth under the merger. It was claimed that the conditions prompting the restrictive producer-handler provisions for the Boston market no longer exist. Thus, they contended, there is no longer a need for any restrictions on purchases from pool plants. Also, it was pointed out that producer-handlers are not able to purchase pool milk for less than the order Class I price plus substantial handling charges, which thereby effectively removes any opportunity to gain a competitive advantage from such purchases. In addition, it was claimed that the imposition of the adopted 2,000-quart limit would require major adjustments in the present operations of some producer-handlers.

All of these points were considered in developing the appropriate producer-handler provisions for the merged order. For the reasons already stated, the provisions adopted herein are appropriate under the current conditions in the proposed New England market.

In connection with the consideration of appropriate producer-handler provisions, a producer-handler in the New York-New Jersey (Order 2) market testified about the application of the proposed merged order to his operation. He wanted assurance that he could distribute certified milk in the New England marketing area without having this affect his current producer-handler status under the New York-New Jersey order or his present and anticipated milk distribution. To accomplish this, he suggested certain modifications to the current Connecticut producer-handler definition.

The producer-handler operates a certified milk processing plant at Chittenango, New York. A minor amount of milk is disposed of from such plant to a Bridgeport, Connecticut, hospital for use in a heart research project. The witness indicated that he hoped to make other limited sales of certified milk in the New England area, which would be handled through distributors and jobbers.

On the basis of his current and expected association with the New England market, the order provisions adopted herein would not affect the witness's status under the New York-New Jersey order. Such sales of certified milk in the New England market would be considered as route disposition by the New York producer-handler. The New England order would exempt him from all provisions of the order as long as his route disposition in the New York-New Jersey market exceeded such disposition in the New England market.

An additional issue relating to producer-handlers is that regarding the diversion of producer milk to such persons by any handler. The Boston order now limits the diversion of milk to producer-handlers to just those persons operating a pool plant. The Connecticut order does not permit diversions to a producer-handler's plant by either a cooperative association or a pool plant operator.

The cooperatives supporting the merged order proposed that in addition to plant operators a cooperative acting as a bulk tank handler also be permitted to divert producer milk from pool plants to producer-handlers. The witness testified that allowing cooperatives to move milk to a producer-handler directly from the farm, rather than requiring the milk to be received at a plant and then transferred to the producer-handler, would eliminate costly plant handling and uneconomic milk movements.

To insure the integrity of the order with respect to producer-handler operations, the merged order should preclude diversions to plants of producer-handlers by any handler. A diversion of producer milk to a producer-handler's plant in actuality is a delivery of milk directly from the farm of a producer to such plant. A basic requirement for a producer-handler's exemption from the pooling and pricing provisions of the order is that such a person receive no milk from other dairy farmers. His receipts of milk directly from the farm must be limited to the production of his own farm. From a practical standpoint, there is no difference between a producer-handler receiving diverted milk from a handler (whether it be a cooperative association or a pool plant operator) and his receiving milk directly from a dairy farmer. In each instance, such milk is received at his plant directly from the farm, and the plant of first receipt is the plant of the producer-handler. The involvement of another handler who directs the milk does not change the actual manner in which the milk moves.

Producer-handlers excepted to the conclusion in the recommended decision that diversions to plants of producer-handlers should not be permitted. Again, the points raised by the exceptors were taken into consideration in arriving at this position and do not provide a basis for reaching a different conclusion regarding this issue.

5. *Definition of dairy farmer for other markets.* As proposed by the merger proponents, the merged order should continue the "dairy farmer for other markets" provisions now contained in the Boston order. The basic purpose of these provisions is to preclude reserve milk supplies associated with local non-federally regulated markets from being pooled under the Boston order. Before such provisions were adopted, it was not uncommon for dairy farmers who were supplying milk to unregulated distributing plants to be shifted to the Boston market when their milk was not needed in the unregulated area for fluid use. This handling arrangement was used particularly during the months of seasonally high production. The milk that was shifted to the Boston market represented unneeded supplies in the regulated market also, and was therefore disposed of in the lower-valued manufacturing uses. This reduced the returns to producers regularly associated with the Boston market. The dairy farmer for other markets provisions were thus developed to assure that Boston order producers would not have the economic burden of carrying the reserve milk supplies for unregulated markets.

Because of the existence of non-federally regulated markets in northern New England, there is a continuing need for the dairy farmer for other markets provisions. Although provisions of this nature are not in the Connecticut order, their application to handlers and producers now associated with the Connecticut market is not expected to affect the current milk handling arrangements of these persons.

The present dairy farmer for other markets provisions also preclude the pooling of milk of dairy farmers who are regularly associated with a Federal order market where a base-excess plan applies. This was adopted to prevent producers in the Middle Atlantic market, the only nearby Federal order market with a base-excess plan, from shipping milk that is in excess of their bases to the Boston market for pooling. The Boston order also prevents the pooling of the milk of a dairy farmer who sells his base and delivers milk to Boston order pool plants. As pointed out by the merger proponents, this latter provision is obsolete since producers under the Middle Atlantic order can no longer transfer bases and still continue in production. Accordingly, this feature of the dairy farmer for other markets provisions need not be retained under the merged order.

6. *Definition of pool milk.* As under the Boston and Connecticut orders, the merged order should contain a "pool milk" definition for purposes of facilitating the drafting of other provisions of the order. Basically, pool milk refers to milk on which a handler is obligated to the pool at the applicable class prices but on which he receives a credit at the blended price in computing his obligation to the producer-settlement fund.

The present pool milk definition includes receipts of bulk fluid milk products at pool plants from plants regulated under Federal orders with individual-handler pools. At this time, there are only four federally-regulated markets using individual-handler pooling. These are the Michigan Upper Peninsula, North Central Iowa, Fort Smith and Memphis markets. Milk from these markets does not move to New England and, because of the distance involved, this would not be expected in the future. Accordingly, there is no need for the merged order to give special recognition under the pool milk definition to receipts from individual-handler pool markets.

The present pool milk definition also prescribes the quantity of route disposition in the marketing area on which an unregulated distributing plant (other than an "exempt distributing plant") has a pool obligation. Such a plant that distributes milk in the market but not in sufficient volume to qualify as a pool plant now has varying degrees of exemption from the pricing provisions of the order. If its in-area sales during the month do not exceed 700 quarts on any day or a daily average of 300 quarts, the plant has no monetary obligation under the order. If its in-area sales exceed the greater of these quantities, then such "excess" distribution, or pool milk, is subject to a per hundredweight pool charge equal to the difference between the Class I and blended prices. This amount is paid by the plant operator to the producer-settlement fund. If he so chooses, the plant operator may avoid such payment by purchasing from regulated plants a quantity of Class I milk equivalent to his in-area sales of pool milk.

Under the merger proposal, an unregulated plant not qualifying as an "exempt distributing plant" would be required to make such a pool payment on all of its route disposition in the marketing area. The merger proponents claimed that there is no economic basis for exempting a portion of the plant's in-area sales from regulation. For this reason, they proposed that "pool milk" include all of the plant's in-area Class I sales.

The proposal should be adopted. It has been recognized that a plant distributing less than 10 percent of its receipts in the marketing area is not sufficiently associated with the market to warrant its full regulation under the order. This is because such a plant has not been considered a major competitive factor for fully regulated handlers whose sales are largely or entirely in the marketing area. Nevertheless, to minimize any price advantage that the plant might have on its limited in-area sales, it has been necessary under the New England orders to impose a pool obligation on such sales or, as an option, require an offsetting purchase of Class I milk. Certain minimum amounts (i.e., those in-area sales not exceeding 700 quarts on any day or a daily average of 300 quarts) have been excluded, however, from any obligation,

largely because of administrative difficulties in applying the regulatory provisions to distributors with very limited in-area sales.

It is appropriate, however, to impose an obligation on all of a distributor's in-area sales and not just to those in excess of 700 quarts on any day or a daily average of 300 quarts, whichever is greater. Only under this degree of regulation can there be reasonable assurance that an unregulated distributor of major size will not have an undue competitive advantage in the regulated market. The removal of the present exemption on certain in-area sales will tend to result in greater equity among handlers subject to the regulatory program in the New England area.

7. *Classification of producer milk on a product pounds basis.* A proposal to determine the classification of producer milk on a product pounds, or volume, basis rather than on the basis of the skim milk and butterfat components should not be adopted.

The Connecticut and Boston orders now require that all milk and milk products received and disposed of by a handler be accounted for in terms of the separate skim milk and butterfat components contained therein. Thus, in reporting his receipts and utilization, a handler reports the pounds of skim milk received and the pounds disposed of, and the same for butterfat. In like manner, the handler's utilization is classified in terms of the separate skim milk and butterfat components. To determine a handler's classification of producer milk, his receipts of milk from the various sources must be assigned to his utilization of milk in each class. Here, also, such assignments are done on the basis of skim milk and butterfat separately.

In conjunction with their merger proposal, the cooperatives proposed that the classification of milk be done in terms of the product pounds of the milk and milk products involved. Such volume accounting was supported by a major proprietary handler. These parties indicated that this accounting method would simplify the administrative procedures of handlers and the market administrator. It was contended that presently much effort is expended to determine the amount of producer butterfat in each class. With the present use of a single butterfat differential, they claimed, such effort is unnecessary since butterfat may be used in either class without changing the total value of the producer milk pooled.

Proponents indicated that only in the case of butterfat overages would there be any change in pool values under their proposed volume accounting procedure. They stressed, however, that the slightly lower value would represent such a small part of the market's total pool value that its impact on the blended price would be insignificant.

In their brief, a group of handlers in the Connecticut market opposed the proposed change to volume accounting, stating that the proposal did not lend itself to complete forward pricing for Class I milk. The group indicated that handlers have advance notice of the Class I price but do not know the cost of the butterfat in Class I milk until after the end of the applicable month. The handlers contended that it may be necessary to later establish a different butterfat differential for each use classification in order to achieve complete forward pricing. They implied that a change to volume accounting would make it more difficult to eventually achieve this.

Although the proposal should be denied, it should be done for reasons other than those suggested by the Connecticut handlers. As pointed out by proponents, volume accounting would benefit basically those persons who compile handler reports and those who determine the classification of producer milk from them. For these persons, volume accounting would represent a simplification of their work, mainly in terms of a reduction in the mathematical computations required in reporting and classifying milk. Such benefits would accrue largely to the market administrator's staff, and to a much lesser degree to handlers and their employees.

Any opportunity for saving work time certainly is worthy of consideration. In this case, however, there are other overriding considerations that support the continuation of the present accounting method.

All Federal orders now provide for the reporting and classification of receipts and utilization on a skim milk and butterfat basis. A change to volume accounting in New England would mean a deviation from the commonly used and accepted accounting practice. For some facets of the regulatory program, local marketing conditions require the use of order provisions especially adapted to the local situation. In the case of certain accounting and administrative procedures, such as the procedure under consideration here, there is seldom any valid basis for differentiating between orders. The administration of the order program tends to be strengthened through the uniform application of milk accounting rules and procedures to all handlers in all regulated markets.

Also, as proposed by the cooperatives, handlers would continue under the volume accounting arrangement to provide the market administrator with complete records of the receipts and disposition of skim milk and butterfat. With such information being available for the separate components, it seems only prudent to use this information to the fullest extent and thus account for milk under the order entirely on the basis of skim milk and butterfat separately. Under the volume accounting procedure that was proopsed, some lowering of pool values could result because of not accounting for the skim milk and butterfat separately. This is because butterfat overages would be priced in all cases at the Class II price, rather than at the Class I price as in some cases presently, and because of a possible offsetting of skim milk overages with butterfat shrinkages. While the anticipated impact on pool values would be relatively small, the full accounting for skim milk and butterfat is preferable in view of the continued availability of information on the two milk components that would exist under the proposal.

Exceptions to the denial of volume accounting were filed by the parties supporting this concept at the hearing. Their trust was basically two-fold. First, the parties contended that it is not essential that the accounting procedures for the merged order be the same as those applicable under other orders. Second, they claimed that the recommended decision misrepresented the manner in which overages would be treated under their proposal.

As noted, local marketing conditions in many cases necessitate the use of order provisions especially adapted to the local situation. This is not the case with the accounting procedures. With market boundaries continually becoming less distinguishable throughout the country, there is no justification today for any unnecessary proliferation of accounting techniques under the Federal order program.

Although the recommended decision did not clearly reflect the treatment of overages contemplated by proponents under their proposal, the conclusion that volume accounting should not be adopted remains valid for the reasons already set forth.

8. *Assignment of a handler's receipts to his utilization.* The present assignment provisions of the Boston order should be used under the merged order but with certain changes in the assignment sequence for receipts of milk from pool plants and producers. Basically, two conceptual changes should be made. First, the assignment provisions should apply uniformly to receipts of bulk milk at a handler's distributing plant from supply plants, regardless of whether the supply plants are operated by the same handler or by other handlers. Second, milk received at a pool distributing plant from producers should be assigned to Class I, except for a limited assignment of such milk to any available Class II, prior to the assignment of any receipts from pool plants. In connection with this latter assignment change, handlers would not be permitted to transfer milk between pool plants by agreement on the classification of such milk.

It is not unusual for pool plants to receive milk for processing from several sources. These may include producers, pool plants, other order plants, and unregulated plants. Because of the commingling of milk from various sources in a plant, there is no way of knowing how the milk from each source is used. For this reason, a handler's receipts of milk from each source must be assigned in a prescribed sequence to his utilization of milk in each class. This is necessary to determine the classification of producer milk received at the plant, as well as the classification of the milk from the various sources.

Proposals for changing the assignment provisions of the Boston order re-

lated to the procedure for assigning at a pool distributing plant receipts of bulk milk from pool supply plants and producers. (For purposes of this discussion, receipts from producers shall include receipts from a cooperative association in its capacity as a handler for farm bulk tank milk.) Presently, supply plant milk is assigned to a handler's Class I utilization at his distributing plant before the assignment of producer milk if the supply plant milk is from a plant operated by another handler and Class II utilization has not been requested. If the milk is received from his own supply plant, the milk is assigned to any remaining Class I use after the assignment of producer receipts to Class I milk.

A multi-plant handler operating both distributing plants and supply plants proposed that bulk milk from all supply plants be assigned to Class I before assigning receipts from producers. The handler indicated that he is the only handler in the Boston market receiving milk at a distributing plant from his own supply plants. Proponent claimed that unless the assignment provisions are changed in this manner his cost of Class II milk at his Charlestown, Massachusetts, distributing plant will continue to be significantly greater than that incurred by competing distributors.

Proponent noted that since other handlers in the Boston area do not operate supply plants, receipts at their distributing plants from supply plants are assigned to Class I first before assigning receipts from producers. It was claimed that this usually results in producer milk being assigned to the handler's Class II use, with the handler's cost for such milk being the city Class II price.

Proponent indicated that in contrast receipts from his supply plants and from producers must be assigned at his Charlestown plant in the reverse sequence. Proponent claimed that because his producer receipts there are less than the plant's Class I use, no producer milk is available for assignment to the plant's Class II use. Hence, much of his supply plant milk is assigned to the lower-priced class. In this case, proponent claimed, the cost of such milk is the Class II price at the supply plant, which is only slightly less than at the city, plus the cost of hauling the milk between the two plants. Proponent indicated that under this arrangement his cost of Class II milk is 30 cents or more per hundredweight greater than the cost of Class II milk at other distributing plants in the Boston area.

The proponent handler indicated that if this proposal is not adopted the minimum corrective action should be the adoption of the assignment changes advocated by the merger proponents. Such changes would provide for the assignment of a limited quantity of producer receipts to a distributing plant's Class II use before assigning the remainder of such receipts to the plant's Class I milk. Such quantity would be limited to 6 percent of the plant's Class I route disposition. In this manner, proponents claimed, most distributing plant operators would be able to have at least enough producer milk assigned to Class II to cover the so-called "unavoidable" Class II uses in a distributing plant. Thus, it was contended, handlers generally would have the same cost under the order for a limited quantity of unavoidable Class II usage at distributing plants.

The proposal of the multi-plant handler was supported by handler organizations in the Connecticut and Boston markets, although the proponent handler is the only member who, under the current situation, would be directly affected by the proposal. The only other regulated handler in the New England area operating both a distributing plant and a supply plant is one of the cooperative proponents of the 6 percent "set-aside" provision.

The assignment provisions of the merged order should be structured in a manner which will promote equity among handlers in the raw product cost of the limited unavoidable quantity of Class II usage at city distributing plants. The multi-plant handler presently has a significantly higher cost for Class II milk at his city plants than competing handlers. This is attributable in part to the assignment provisions of the Boston order under which the assignment of receipts from producers and supply plants at distributing plants varies depending on whether the milk from a supply plant is from the handler's own plant or from another handler's plant.

Continuation of these provisions under the merger order would mean, of course, that the proponent handler would continue to experience higher costs than other handlers for Class II milk at the city. Without appropriate modification of the assignment provisions under the merged order, this problem would be accentuated since the handler would for all practical purposes lose the ability to use interorder movements of Class II milk to achieve some measure of relief. Presently, the handler moves milk from his Agawam, Massachusetts, plant that is pooled under the Connecticut order to his Boston order plant at Charlestown on a requested Class II basis. Under this arrangement, the handler is able to obtain some milk for Class II use at the Charlestown plant at essentially the city Class II price. This arrangement will not be available to the handler with both plants pooled under the merged order.

The proponent handler's preferred method of resolving the problem should not be adopted. As he proposed, milk from supply plants would be assigned to a distributing plant's Class I use prior to the assignment of producer milk, irrespective of who operated the supply plant. While this would result in the uniform application of the assignment provisions to all city plant operators, it would provide an even greater opportunity than now for uneconomic movements of country plant milk to the city at the expense of the pool and hence all producers in the market.

In addition to pool distributing plants at Charlestown and Agawam, proponent operates five supply plants pooled under the present Boston order. Milk is moved from these supply plants to the Charlestown plant not only for Class I purposes but for Class II uses as well. In 1972, nearly 3 million pounds of supply plant milk were moved to the Charlestown plant and assigned to the distributing plant's Class II utilization. Such movements amounted to over 5 million pounds in 1973, and nearly 4.5 million pounds in the first nine months of 1974. In addition to processing Class II products at the Charlestown plant, the handler uses pool milk at his nearby nonpool ice cream plant and also disposes of Class II milk to other city manufacturing plants.

Adoption of the handler's preferred proposal would result in most of the supply plant shipments being assigned to the Charlestown plant's Class I use. Receipts of producer milk at the distributing plant, which would be assigned after receipts from supply plants, would end up being assigned to the city plant's Class II utilization. Such assignment of milk would result in a lowering of the total value of milk in the pool. When producer receipts at the distributing plant are assigned to Class I, the applicable order Class I price for such milk is the city Class I price. When the supply plant milk is assigned to Class I, the price that attaches to the handler's Class I utilization is the Class I price at the supply plant(s) from which such Class I milk is shipped. At a plant in the 21st zone, this price is 40 cents per hundredweight less than at the city under the present pricing structure of the Boston order. In this example, the pool value thus would be lowered by 34.2 cents for each hundredweight of Class I usage at the city plant for which producer milk is displaced with milk from the zone 21 supply plant. (It should be noted that the pool reduction is limited to 34.2 cents per hundredweight, rather than 40 cents, because the producer milk assigned to Class II at the city plant is priced 5.8 cents per hundredweight above the zone 21 Class II price.)

The order should not encourage the shipment of supply plant milk to the city unless it is needed there for fluid use. This is not the effect, however, of the current assignment provisions now applicable to virtually all handlers, and which were proposed to be applicable to the proponent handler as well. Such provisions permit country supply plant milk to be moved to a city distributing plant at the expense of all producers in the market and be assigned to the distributing plant's Class I use in situations where adequate direct receipts from producers are available to cover such plant's Class I use.

The opportunities for handlers to take advantage of this arrangement are much greater now than when the present assignment provisions were adopted. During the early period of the Boston order, about 90 percent of the milk for the market was received and priced at country plant locations. There were at least 12 handlers operating both city distributing

plants and country supply plants at that time. With many handlers operating both types of plants, there was considerable opportunity for these handlers to move milk from their own supply plants to their distributing plants for Class II use at the expense of the pool. Requiring producer receipts at the distributing plant in this case to be assigned to Class I milk before assigning country plant milk provided a necessary safeguard against uneconomical milk movements.

Today, there is only one handler operating both types of plants under the Boston order, and only two handlers would be operating in this manner under the merged order. Although only about 40 percent of the producer milk in the New England market is being received and priced at country plant locations, much of this milk may be brought to the city at the expense of the pool since most handlers are no longer subject to the restrictive assignment provisions which apply on movements of milk between plants operated by the same handler.

It is appropriate that the assignment provisions of the merged order apply uniformly to all distributing plant operators. However, for the reasons just indicated, receipts of producer milk should be assigned to a distributing plant's Class I utilization before the assignment of receipts from pool plants. To the extent that milk from other pool plants is assigned to Class I milk, such milk should be assigned in sequence according to the zone locations of the shipping plants, beginning with the plant in the zone nearest to Boston. This sequence of assigning receipts at a city plant is necessary to assure the minimum cost to the pool with respect to interplant movements.

The proponents of the merged order recognized that there are certain Class II uses of milk at a distributing plant that are associated with the processing, packaging, and sale of fluid milk products. A witness for proponents testified that the production of light cream, the disposal of route returns, and plant shrinkage are basically unavoidable Class II uses at pool distributing plants. In support of his alternative proposal, the multi-plant handler offered an exhibit showing a detailed breakdown of the consolidated operations for two months at his two pool distributing plants. The exhibit indicates that such unavoidable Class II uses at these plants represented about 6 percent of the Class I route disposition from such plants.

Under the assignment procedure adopted herein, whereby producer receipts are assigned before milk from supply plants, there is always the possibility that Class I uses and unavoidable Class II uses may exceed receipts of producer milk. To insure, insofar as possible, that all handlers who are receiving both producer milk and supply plant milk have a comparable cost under the order for milk involved in the unavoidable Class II uses, the order should provide for assigning a limited quantity of producer receipts to the distributing plant's Class II use before assigning the remainder of such receipts to the plant's Class I utilization. Such quantity should be limited to 6 percent of the plant's Class I route disposition or the remaining Class II milk at this point in the assignment sequence, whichever is less.

In conjunction with assigning receipts from pool plants, the classification of interplant transfers by agreement between the buying and selling handlers would not be provided under the merged order. If the order permitted handlers to transfer milk by agreement, they could use such movements to circumvent the intent of the assignment provisions adopted herein.

Exceptions to the adopted assignment provisions were filed by the cooperatives proposing the merged order and by several proprietary handlers. The exceptions to a large extent were directed toward the provisions that would require receipts of producer milk to be assigned to a distributing plant's Class I utilization before assigning receipts from supply plants. Exceptors objected to the adoption of this assignment procedure, contending that it would have a disruptive impact on the present arrangements for marketing milk.

Exceptors claimed that under the new assignment procedure supply plants would be a less attractive source of milk than presently for distributing plants that rely on deliveries from both producers and supply plants. They pointed out that since producer receipts would have priority assignment to Class I, except for the 6 percent set-aside, at least some of the receipts from supply plants would be assigned to the distributing plant's Class II utilization. It was claimed that such shipments of Class II milk would be uneconomical since the order's Class II transportation allowance does not cover the cost of hauling bulk milk. Exceptors indicated that distributing plant operators who have been obtaining supplemental milk from supply plants therefore could be expected to obtain all of their milk directly from producers (including cooperatives acting as handlers of bulk tank milk) Because of this, supply plants would have considerable difficulty meeting the shipping requirements for pooling. It was claimed that supply plant operators would have to pay the hauling cost on any Class II shipments to the city if they were to maintain their city outlets, and thus pool status for their plants. Also, it was contended that the supply plants most distant from the central market would be the most severely affected by the new assignment procedure since any Class II classification to be passed back to supply plants from distributing plants would be assigned first to the most distant plant.

In making these points, exceptors are basically concerned about the ability of supply plants, and particularly the more distant ones, to maintain their pool status under the order. If the pool status of any supply plant is in fact jeopardized by the changes adopted herein, the pooling requirements can be reviewed at a subsequent hearing. It is not the intent of the adopted assignment procedure to depool milk supplies that have been regularly associated with the New England market. However, the present assignment provisions should not be continued for the purpose of accommodating the pooling of milk, as suggested by exceptors. This would be dealing with a pooling problem through the wrong regulatory technique, and one that is causing an unwarranted cost to producers. The legitimate pooling of milk can be achieved without having producers in the market bear the hauling costs incurred when milk is shipped from a supply plant to the city solely for the purpose of pooling the supply plant.

Exceptors also indicated that since city operators would prefer direct-ship producer milk many of the supply plants in the market would be converted to reload points. Under this arrangement, which involves having the facilities operated by a milk hauler rather than the handler, the milk going through such facilities would be treated as direct-ship milk and the producers involved would pay the total farm-to-distributing plant hauling cost. Certain cooperatives operating manufacturing facilities at their supply plants indicated that they would not be able to convert their plants to reload points and thus would not be able to compete for city outlets with these direct-shipped supplies. On the other hand, cooperatives claimed that country handlers, in order to have direct-ship milk available, could be forced to continue the operation of current reload points in some cases where it might actually be more economical to handle the milk transfer operations at their manufacturing plants.

Again, the issues raised by exceptors relate generally to the concern by supply plant operators about maintaining pool status for their plants. As indicated, this is an issue that can be dealt with at a later hearing should this step appear warranted.

An additional question is raised, however, regarding what constitutes a "plant." Under the current order provisions, facilities used for transferring milk from farm trucks to over-the-road tankers are defined as a "plant" if operated by a handler. Milk received at the "plant" from producers is then priced at that location. If the facilities are operated by someone other than a handler, such as a milk hauler, they are not treated as a plant and the milk transferred there is treated as direct-ship milk and priced at the city plant where received, rather than at the location of the reload facilities. The appropriateness of this divergent treatment of milk handled through facilities serving exactly the same function in either circumstance perhaps should be the subject of a later hearing.

Exceptors further claimed that milk produced near the market center would not necessarily be relied upon by city plants, as might be expected under the new assignment procedure. They indicated that with the expected preference for direct-ship milk, such milk would

move to distributing plants through reload points located a considerable distance from the city, and in some cases, from more distant areas than supply plant milk. It was their position that under these circumstances the adopted assignment procedure would not save any transportation costs for producers, as claimed by the Department, since producers would incur the total farm-to-plant hauling cost on any direct-ship milk moved to city plants. Moreover, exceptors contended that with producers paying the cost of hauling direct-ship milk to the city for Class II use, there would be an incentive for distributing plants to develop or expand manufacturing operations.

These marketing arrangements are no less available to distributors and producers under the current order provisions than they would be under the new assignment procedure. City plant operators can expand their Class II utilization now, and can do so by procuring milk from distant producers. It is true that such producers would gain little, if anything, in their net returns by shipping to a city distributing plant rather than a country supply plant. Although they would receive a higher blended price, they also would incur the extra cost of having their milk hauled the additional distance. Nevertheless, this is no basis for not removing the present incentive to move supply plant milk to the city for Class I use when direct-ship milk is already available at the city plant for such use.

In their exceptions, cooperatives argued that city handlers using direct-ship milk in Class II would have a lower cost for such milk than those obtaining supply plant milk for similar uses. The cooperatives contended that the adopted assignment provisions thus do not meet the test of uniform pricing to handlers as required by the Act.

It is not the intent of the Act, nor would it be possible, for an order to insure that all handlers have the same cost of milk in a given use under all possible methods of operation. Each handler presumably will choose those supply sources that best complement his total operation. A handler might rely entirely on direct-ship milk, which may or may not move through reload points, or on supply plant milk, or perhaps on a varying combination of the two sources. No two arrangements would normally result in exactly the same procurement cost for milk. The adoption of the 6 percent set-aside provision will provide some greater cost uniformity than presently for those distributors who rely largely on direct-ship milk but buy supplemental milk from supply plants. As contended by the cooperatives, however, purchases from supply plants in excess of the 6 percent set-aside quantity, if assigned to Class II, presumably will cost the city handler more than receipts of direct-ship milk. It is noted that although the cooperatives complain that the adopted provisions would result in a lack of cost uniformity among handlers, they continue to support the retention of the present assignment procedure (except for the 6 percent set-aside change) that places the major proprietary handler in the market at a substantial disadvantage relative to other handlers on the cost of Class II milk.

In their exceptions, certain handlers objected to not being able under the merged order to transfer milk between pool plants on the basis of an agreed on classification. They contended that this could cause undesirable billing adjustments should the market administrator's audit result in a reclassification of the transfers. It is probable that there will be more billing adjustments under the new provisions than presently. However, this is not a compelling reason for retaining the current assignment procedure.

Cooperatives and handlers contended in their exceptions that the adopted changes in the assignment provisions go beyond the scope of the hearing. This is not the case. The testimony established that significant inequities among handlers exist under the present assignment provisions and that corrective changes in the order are necessary. The possible solution offered by various parties, if adopted, would not correct the problem in a manner consonant with the intent of the Act. In seeking remedial solutions, the Secretary cannot be limited in his considerations to just those suggested by parties at the hearing. Otherwise, he could be faced, as here, with evidence of order provisions that are not consistent with the current marketing situation without any opportunity to make corrective changes in a manner that would carry out the purposes of the Act.

9. *Location adjustments and direct delivery differential.* The pricing provisions of the Boston order should be continued under the merged order with only slight modification. No provision should be made for a direct delivery differential.

The present Boston announcement procedure with respect to the Class I, Class II, and blended prices would be provided under the merged order. In this regard, the market administrator would announce such prices applicable at the 201–210 mile zone.

As adopted herein, Boston would be the single basing point for determining the zone location of plants, as is now the case under the Boston order. Even though the merged order would not designate Hartford as a basing point for such purpose, as the Connecticut order presently provides, this will pose no problems in pricing milk at various locations because all pool plants now regulated under the Connecticut order are located in the "nearby plant" zone. Hence, the prices at such plants would not be dependent upon the distance of the plants from the basing point.

For pricing purposes, each order now defines a "nearby plant" zone. Except for several plants in New Hampshire and Vermont, these zones encompass all of the distributing plants regulated under the two orders. It is at these "city" plants that the highest Class I, Class II, and blended prices under each order apply.

As proposed by the cooperatives, the nearby plant zone under the merged order should include all areas within the States of Massachusetts (except Berkshire County), Rhode Island and Connecticut. This will cover essentially the same areas now included in the nearby plant zones of the individual orders. Excluded, however, would be 12 towns in the eastern and southern parts of Berkshire County, Massachusetts. The towns of Florida, Savoy, Windsor, Peru, Hinsdale, Washington, Becket, Otis and Sandisfield are now in the Boston nearby plant zone. The towns of Mount Washington, Sheffield, New Marlboro and Sandisfield are in the Connecticut nearby plant zone. No plants are located in any of the 12 towns. Hence, the exclusion of these towns will have no impact on the pricing of milk at any plant.

Under the Boston order pricing structure, herein adopted, the zone 21 Class I price under the merged order will be the Minnesota-Wisconsin price for the second preceding month plus $2.58. A plus location adjustment of 40 cents per hundredweight will apply at plants located in the nearby plant (city) zone. This will result in a Class I price differential for this zone of $2.98, the same as is now applicable under each of the individual orders. For plants located between zone 21 and the city, the zone 21 Class I price will be increased at the rate of 1.2 cents for each 10-mile zone nearer Boston, except that an additional 16 cents per hundredweight is added at the boundary between the 15th and 14th zones. For plants located beyond zone 21, the zone 21 Class I price is reduced at the rate of 1 cent for each 10-mile zone.

The same structure of location adjustments is used in determining the applicable blended price at the various plant locations.

The zone 21 Class II price under the merged order will be the Minnesota-Wisconsin price for the current month, subject to certain seasonal price adjustments not at issue in this proceeding. This is the price now applicable under the individual orders. The Class II price adjustments now effective under the Boston order are continued under the merged order. Thus, the Class II price at plants in the nearby zone is 5.8 cents per hundredweight higher than the Class II price at the 21st zone. The adjustment of the announced Class II price for each 10-mile zone varies from zone to zone, ranging from no adjustment to 0.6 of a cent per hundredweight.

In contrast to the initial unified position of the cooperatives on virtually all other hearing issues, the cooperatives were not in agreement as to what location adjustment structure should apply for the consolidated market. Five of the cooperatives that supported the merger at the hearing urged that the pricing provisions of the Boston order be continued without change (except for the minor change in the boundary of the nearby plant zone already noted). The other three cooperatives initially advocating the merger proposed changes in

the zone location adjustment structure and the adoption of a direct delivery differential.

Under the pricing changes proposed by the latter three cooperatives, the present Class I price at the 21st zone would be continued. The Class I price at plants in the nearby plant zone would be the zone 21 price plus 44 cents. At locations between the 21st zone and the city zone, the Class I price would be increased for each 10-mile zone nearer Boston at the rate of 1.8 cents per hundredweight. An additional 8 cents per hundredweight would be added at the boundary between the 15th and 14th zones. At plants located beyond zone 21, the Class I price would be reduced at the rate of 1.3 cents for each 10-mile zone. The same adjustments also would apply to the blended price under their proposal.

With respect to Class II milk, the three cooperatives proposed that the location adjustments now applicable under the Boston order be continued except at plants located in zone 14 or a nearer zone. Because of the proposed application of a 6-cent direct delivery differential at such plants (as described below), the cooperatives proposed that the announced Class II price for the 21st zone apply at such plants without adjustment. The net effect of these changes would be to increase the order cost of Class II milk at plants in the nearby plant zone by 0.2 of a cent per hundredweight. At plants in zones 4 through 14, the cost per hundredweight would be increased from 1.5 cents to 3.9 cents.

In conjunction with the proposed changes in the location adjustments, the three cooperatives proposed that handlers be required to pay producers a 6-cent direct delivery differential for each hundredweight of milk received directly from such producers at plants located in zone 14 or a zone nearer Boston. This would include all distributing plants and cooperative balancing plants now pooled under the individual orders. This differential, which handlers would be required to pay producers over and above the blended price, would apply to all such direct-ship milk irrespective of its use.

The three cooperatives indicated that their proposed changes in the Class I and blended price location adjustments are necessary to reflect the current cost of hauling milk from distant plants to the city. They claimed that since the adoption of the present rate structure in 1967, transportation costs have increased significantly. Because of this, the cooperatives contended, the order pricing does not now properly reflect what distributing plant operators must pay to obtain milk from distant supply plants.

Proponents pointed out that at the time the present location adjustment provisions were adopted under the Boston order, the "variable" cost of hauling milk was 1.2 cents per hundredweight per 10 miles, which is the zone adjustment rate reflected in the present order. They also pointed out that the "fixed" hauling cost was considered to be 10 cents per hundredweight. Proponents noted that the 16-cent price adjustment built into the present location adjustment structure was intended to reflect this fixed cost, plus a 6-cent first plant handling charge.

The cooperatives claimed that the variable hauling cost now being experienced in the New England area is 1.8 cents per 10 miles. They indicated that the fixed cost, on the other hand, has decreased somewhat. Although recognizing that their data would suggest a fixed cost of 6.4 cents per hundredweight, proponents urged that the order reflect a fixed cost of 8 cents to accommodate anticipated increases in truckers' expenses. The cooperatives contended that on the basis of this cost experience the Class I and blended price location adjustments between zone 21 and the city zone should be established at a rate of 1.8 cents per 10 miles plus a price adjustment of 8 cents at the boundary between the 14th and 15th zones.

The three cooperatives proposed that the first plant handling charge in the present rate structure be replaced with a direct delivery differential. They claimed that this would be more in line with the current pricing arrangements under other orders in the northeast. They noted that both the New York-New Jersey and Middle Atlantic orders provide for the payment of a direct delivery differential by handlers. Also, the cooperatives suggested that the direct delivery differential would encourage the movement of milk directly from farms to city plants, which they claimed is more efficient than moving the milk through supply plants.

Although a first plant handling charge would not be reflected in their proposed location adjustment rate structure, the cooperatives contended that distributing plant operators still would have to pay at least a 6-cent per hundredweight handling charge on milk obtained from supply plants. They pointed out that such a charge, when added to the proposed 44-cent location adjustment for the nearby plant zone, would make the actual cost of Class I supply plant milk received at city plants 50 cents per hundredweight greater than at plants in the 21st zone. The cooperatives indicated that with the proposed 6-cent direct delivery differential, which would be applicable at all plants in zone 14 or a nearer zone, a handler's total cost of Class I direct-ship milk from producers at the city also would be 50 cents (44-cent location adjustment plus 6-cent direct delivery differential) over the zone 21 Class I price. Proponents claimed that through the use of the direct delivery differential the cost of Class I milk at distributing plants would be essentially the same whether the milk was obtained from supply plants or directly from producers, including receipts from cooperatives acting as bulk tank handlers.

Opposition to these proposed pricing changes was largely in terms of what the anticipated impact would be on the competition for milk supplies in the State of New York. Two New York based cooperatives with members shipping to New England handlers indicated that there is a substantial overlapping of the New England and New York-New Jersey milksheds in eastern New York. The cooperatives claimed that the proposed pricing changes would further aggravate what they consider to be an unsatisfactory competitive situation for Order 2 handlers. They contended that producers in New York who are shipping to New England handlers already are receiving a higher blended price than neighboring producers whose milk is pooled under Order 2. It was the position of opponents that an increase in the city Class I price, plus the application of a direct delivery differential, would make it even more difficult for Order 2 handlers in eastern New York to maintain an adequate supply of milk for fluid use since more New York milk presumably would be attracted to the New England market.

This position was supported by three Order 2 proprietary handlers located in eastern New York. The witness for these handlers indicated that their procurement area has had to be shifted westward as more and more of the milk production in eastern New York shifted to plants pooled under the New England orders.

A handler organization in Connecticut also opposed the pricing changes. It was their contention that since all milk supplies now associated with the Connecticut market are already moving to distributing plants on a direct-ship basis, there is no need for an additional incentive, such as the direct delivery differential, for milk to be moved in this manner.

The handler organization in the Boston market, on the other hand, supported the proposal for a revised location adjustment rate structure. No position was expressed, however, regarding the proposed direct delivery differential.

There are several considerations that lead to the conclusion that the pricing changes proposed by the three cooperatives should not be adopted. For one thing, the higher value that would be accorded by the order to Class I milk at pool distributing plants cannot be justified under the present supply conditions. The proposal would increase the present Class I price that applies throughout the nearby plant zone by 4 cents per hundredweight. The direct delivery differential would increase this value by another 6 cents. Thus, handlers in the city zone would be paying an additional 10 cents per hundredweight for Class I milk received from producers and cooperatives acting as bulk tank handlers. In 1974, such Class I milk in the Boston and Connecticut markets combined totaled 2,074 million pounds. This represented 70 percent of all Class I producer milk in the combined areas, and 44 percent of all producer milk priced under the two orders that year. With 75 percent of the producer milk received in the city zone being used in Class I, the 10-cent higher value for Class I milk would translate to an increase in returns to those producers shipping to city zone plants of over 7 cents per hundredweight.

It is noteworthy that in 1974 an additional 615 million pounds of Class I pro-

ducer milk were received at plants located in zones 4 through 20. This quantity comprised an additional 21 percent of the Class I producer milk under the two orders. The changes in location adjustments for these zones proposed by proponents, in conjunction with their proposed 6-cent direct delivery differential in zones 4–14, would result in handlers in these zones paying additional amounts for Class I milk ranging from 0.6 of a cent in zone 20 to 8.2 cents per hundredweight in zone 4.

The present supply-demand relationship in the New England area does not suggest that additional returns to producers are needed to assure an adequate supply of milk for fluid use. In 1974, the Class I utilization of all producer milk in the Boston and Connecticut markets combined was 63 percent. In the individual areas, such utilization was 59 percent for Boston and 72 percent for Connecticut. Thus, even in the Connecticut segment of the proposed New England market, milk supplies would appear to be adequate. There was no indication by Connecticut handlers that there has been a shortage of milk for fluid use.

Even without a price increase, handlers in the city zone should have no trouble procuring sufficient supplies of milk. Because of the higher Class I price and greater Class I utilization of milk in New England relative to the Order 2 market, New England handlers have a significant competitive advantage over Order 2 handlers in the procurement of milk. Milk is being moved, for example, through a reload point from the heavy production area around Delhi (Delaware County), New York to the Connecticut market. Delhi is approximately 235 miles (24th zone) from Boston. On this basis, and using price data for July 1974, the blended price under the Boston order at the Delhi reload point, had it been a plant, would have been $7.93. By comparison, the New York-New Jersey blend price at that location was $7.73. Moreover, under the merger this difference presumably would be even greater. One cooperative association witness estimated that had the merger been in effect in July 1974 the Boston blended price would have been 15 cents higher. Also, with Delhi being about 145 miles from Hartford, fluid outlets in Connecticut are much closer to Delhi than Boston. The much lower hauling cost that would be involved on direct-ship milk would provide Delhi area producers an additional opportunity for still higher returns.

The Delhi situation merely serves as an illustration of the competitive advantage that New England handlers can be expected to have in the procurement of milk in the State of New York. Already, substantial quantities of New York production are being associated with the present New England markets. In 1974, over 38 percent of the producer milk pooled under the Connecticut order was produced on New York farms. In the Boston market, nearly 21 percent of the producer milk came from New York. If distributing plant operators in New England should have need for additional milk, such milk should be readily obtainable from the New York production area under the existing price structure. This should be particularly true for Connecticut handlers, who are much closer to the New York supply. There is no valid foundation for the apprehensiveness of Connecticut handlers, as noted under Issue 1, regarding sufficient milk supplies under the merged order.

As indicated earlier, certain New York based cooperatives opposed any price increase on the basis that this would cause more milk to shift from the Order 2 market to the New England market. Although the proposed price changes are not adopted, it is not for the purpose of discouraging the procurement of New York milk by New England handlers. There already appears to be enough price incentive to encourage the shifting of additional milk supplies to the New England area. Normally, producers tend to seek those outlets for milk that net them the highest returns on their production. If plants in the New England market represent the most remunerative outlets for New York producers, such producers can be expected to take advantage of this situation to the extent that they are able to find a New England handler willing to buy their milk.

If there were justification for increasing the location adjustment rate, as the three cooperatives contended, consideration could be given, of course, to retaining the present Class I price level at the city zone and reducing the present prices at the distant locations. Using proponents' suggested price difference between the city and zone 21, this procedure would result in a zone 21 Class I price 10 cents below the present level. This, of course, would change the present relationship of Class I prices under Order 2 and the New England orders at the 201–210 mile zone. Proponents held that this price relationship has been found appropriate and should not be changed.

Aside from this point, serious question must be raised as to whether there is, in fact, justification for changing the present location adjustments irrespective of how the changes might be implemented. It has been common practice in New England to have the price adjustments reflect not only the variable cost of hauling bulk milk but the fixed cost as well, plus a first plant handling charge. In other federally-regulated markets, only the variable cost is reflected. This tends to provide a degree of restraint on unneeded movements of milk from supply plants.

The present pricing scheme in New England is an outgrowth of the past heavy reliance of distributing plants on milk from supply plants. As much as 90 percent of the pool milk during the early days of the Boston order moved through supply plants. Today, less than 40 percent of the producer milk that will be pooled under the merged order is received at supply plants, and a further decline can be expected. As was noted by witnesses supporting the proposed price changes, it is more efficient to move milk directly from the farm to distributing plants than through supply plants.

It is recognized that hauling costs have increased since the present location adjustment provisions were adopted. The data offered by the proponent cooperatives suggest that the variable hauling cost is now 1.8 cents per hundredweight for each 10 miles. A rate of 1.5 cents per 10 miles is now the commonly used rate in most Federal order markets, not only for establishing price adjustments on an intramarket basis but for aligning prices between markets. The location adjustments now applicable in New England, which would be continued under the merged order, are in effect providing handlers a transportation rate on much of the supply plant milk of 2 cents per 10 miles. In view of the apparent adequacy of milk supplies at distributing plants, there is no justification for adoption of a higher transportation rate under the order.

The three cooperatives proposing the location adjustment changes and a direct delivery differential, along with handlers in the Boston market, objected in their exceptions to the Department's failure to adopt the proposed changes. These parties claimed that over the years the location adjustment rates in the New England orders have been changed from time to time as changes in the cost of hauling and assembling milk have occurred. They stressed that the current location adjustment rates should be increased in view of the recent increase in hauling costs in the same manner that the order rates were lowered in the past to reflect decreases in hauling costs. The parties also stressed that the historic practice in New England of reflecting both the variable and fixed hauling costs and a first plant handling charge in the location adjustment rate structure should be continued, rather than adopting a location adjustment rate that more nearly conforms to that commonly used under other orders. It was pointed out that supply plant milk still represents a significant part of the total milk being marketed in New England, that such milk is needed at the city for Class I use, and that without a change in the location adjustment rate this milk will remain more costly for distributing plants than direct-ship milk. Exceptors also claimed that the current adequacy of milk supplies at distributing plants should not be a basis for continuing the present location adjustment rate structure under the merged order.

The several points raised by exceptors, and the marketing ramifications involved, were among the numerous facets of this issue that were considered in arriving at the initial conclusion to continue the current rate structure. For the reasons already set forth, such provisions are appropriate under the present marketing arrangements in New England.

10. *Point of pricing for diverted milk.* Producer milk diverted from a pool plant to another pool plant or to a nonpool plant should be priced at the location of the plant to which the milk is diverted.

Under the Boston order, milk that is diverted from pool plants in zone 14 or a nearer zone to a plant in any pricing zone more distant than zone 14 is priced at the plant to which the milk is diverted. In the case of other diversions, the milk is priced at the location of the plant from which diverted. The Connecticut order, on the other hand, prices all diverted milk at the location of the pool plant from which the milk is diverted. Both orders permit milk to be diverted from any pool plant.

Cooperatives urged that the present Boston order provisions for pricing diverted milk be retained. They indicated that when the diversion results in a substantial savings in hauling, the diverted milk should be priced at the plant to which diverted. It was their contention that when milk is moved directly from distant farms to manufacturing plants located nearby rather than to city plants, the producers involved appropriately should not receive the city price for their milk since they did not actually incur the farm-to-central market cost of hauling. Proponents recognized that with a continuation of the Boston order provisions not all diversions would be priced at the plant of physical receipt. They claimed, however, that only a small quantity of diverted milk is now priced at the plant from which diverted, and that the price impact on the pool is minimal since the total price differences between the zones involved are small.

A modification of the Boston pricing arrangement was proposed by a handler who operates a distributing plant under each of the two orders. Both plants are located in the nearby plant pricing zone. The handler proposed that during the months of April, May and June a limited quantity of milk diverted from these plants to plants beyond zone 14 be priced at the location of the diverting plant. Such limit would be set at 15 percent of the distributing plant's producer receipts during the month, including diverted milk.

In support of the proposal, the handler indicated that when milk is diverted from the nearby plant zone to a country plant where it is priced, the producer still expects to receive the higher city blended price for his milk. Proponent claimed that while it has been a customary practice to pay the city price in this situation, there is a monetary loss to the handler equal to the difference between the blended prices for the two zones. Only when there is a savings in the cost of hauling the diverted milk does the handler recoup any of this loss.

The handler pointed out that the special pricing arrangement for April, May and June would recognize the particular surplus disposal problems during the three months of heaviest milk production. It was noted that during these months the manufacturing plants in the nearby plant zone are normally filled to capacity. Because of this, some of the milk associated with the handler's distributing plants must be diverted during these months to distant plants for manufacturing. The handler indicated that the problem is particularly acute on weekends when the distributing plants do not process milk for one day. It was in recognition of this that the handler asked for special pricing for up to 15 percent of the distributing plant's producer receipts. Such amount, the handler claimed, would roughly cover the amount of producer milk that the handler must move elsewhere on the non-bottling days.

This proposed modification of the Boston pricing arrangement was supported by handler organizations in the Connecticut and Boston Regional markets.

As under the individual orders, handlers should be permitted under the merged order to divert producer milk from pool plants to other plants. Such an arrangement will continue to permit the orderly and efficient disposition of the market's reserve milk supplies. When producer milk is not needed at pool plants for fluid use, its movement to unregulated plants for manufacturing without loss of producer milk status will be accommodated. Also, when milk of producers is diverted from the pool plant of normal receipt to other pool plants, the diverting handler will be able to retain those producers on his payroll and maintain his status as the accountable handler for the milk.

The merged order should provide, however, that all diverted milk be priced at the plant where it is physically received. This comports with the basic intent of the Act that milk be priced at the location of the plant of actual receipt. Through this means, such milk will be priced under the order in accordance with its actual location value.

For accountability purposes, diverted milk is considered to have been received by a handler at the plant from which the milk is diverted. This, of course, is not the plant where the milk is actually received. The physical receipt of the milk at a plant occurs at the plant to which the milk is diverted. From a practical standpoint, this diverted milk is indistinguishable from receipts of milk at that plant directly from dairy farmers. In the case of both types of receipts, the milk is trucked directly from the farm to the plant where it is physically received. Because of this, there is no basis for according different values to the milk. Both types of receipts have the same location value to the operator of that plant.

The location adjustments under the present orders reflect the fact that producer milk received at plants at the market center has a greater value to handlers than milk received at country plants. Accordingly, producers delivering milk directly to city plants receive the blended price applicable at that location while those delivering to country plants receive a lower blended price.

So that the proper location value will attach to diverted milk, such milk should be priced at the location of the plant where it is physically received, i.e., the plant to which the milk is diverted. In the case of diversions to pool plants, this will accord such milk the same location value that direct receipts of producer milk have at the location of that plant. Similarly, when producer milk is received at a nonpool plant as diverted milk, its location value will be the same as that for milk delivered by producers to a pool plant at that same location.

In addition to properly recognizing the location value of diverted milk, this pricing arrangement also will remove the possibility of a pool subsidy which can accrue to certain producers when their diverted milk is priced at the plant from which diverted. When milk is not needed at the city, handlers normally divert to country manufacturing plants the milk of those producers located some distance from the central market. In such case, there is a considerable savings in hauling costs. Payment of the blended price applicable at the city plant from which the milk was diverted, however, accords an unwarranted value to such milk. This value comes from the pool, and results in a lower blended price to producers in general. This is not an equitable arrangement for producers in the market.

The proponent cooperatives reiterated in their exceptions to the recommended decision that there is need for continuing the current pricing of milk that is diverted from plants beyond zone 14 to other plants. They indicated that there has not been any significant abuse of this arrangement, which prices such milk at the plant from which diverted, and that it contributes to orderly marketing for all producers.

The reasons for pricing all diverted milk at the plant of physical receipt, as set forth above, are overriding in this case. Accordingly, the present pricing arrangement should not be continued.

Adoption of the handler proposal for special pricing for milk diverted during April, May and June would be inconsistent, of course, with the general concept just outlined for pricing milk at the location of the plant where it is physically received. The evidence concerning the handler's operations does not indicate that there are overriding considerations that warrant milk being priced at the plant from which diverted, even with respect to a very limited quantity of milk. In any event, it appears from the record that the handler already has adequate means for minimizing handling costs on his surplus milk.

The handler operates a number of plants in the area. In addition to the two pool distributing plants, the handler also operates several pool supply plants, some with manufacturing facilities. The handler also has three nonpool ice cream plants, two of which are located near his pool distributing plants. One of the distributing plants is generally supplied with direct-ship milk from producers, much of which originates from production areas outside zone 14. The other distributing plant receives about 15 percent of its milk supply from direct-ship producers. Again, much of this comes from distant production areas. The remainder of the supply comes from distant supply plants.

Although detailed figures on the handler's operations are not in the record, it is likely that more milk is being associated on a regular basis with the handler's pool distributing plants than is needed for Class I use. This additional milk is either processed at the distributing plants or diverted to the handler's nearby ice cream plants or to other nearby manufacturing plants for Class II use.

As indicated, much of the milk received at one of the handler's distributing plants comes from supply plants. During the heavy production months, enough of this milk seemingly could be held up-country to relieve the handler's need for diverting direct-ship milk from his distributing plants to distant manufacturing plants.

An additional facet of the handler's operations also should be noted. Some of the direct-ship milk received at the handler's distributing plants is produced in Vermont near country manufacturing plants. It is reasonable to presume that it would be some of this milk that is diverted during the spring months since there would be a substantial savings in hauling. Should such milk be priced under the order at the city plant from which diverted, as the handler proposed, the producers involved would be receiving a price intended to cover hauling costs that in fact were not incurred. Such should not be permitted at the expense of the pool.

It cannot be concluded under these various circumstances that special consideration should be given to the handler's problems of handling surplus milk as were outlined at the hearing. The varied nature of the handler's supply arrangements for the distributing plants should provide the handler with sufficient flexibility to minimize costly handling arrangements. Accordingly, the proposal is denied.

In his exceptions, the proponent handler objected to the denial of the proposal. He claimed that the Department's present rationale for pricing all diverted milk at the plant of actual receipt is inconsistent with the Department's prior position on this issue with respect to the New England markets. The handler, along with Connecticut handlers, also contended that at least some diverted milk should be priced at the "diverted from" plant to accommodate the disposition of surplus milk.

It is true that on the basis of previous findings by the Department the Boston and Connecticut orders now price at least some diverted milk at the location of the plant from which diverted. On the basis of the present marketing conditions and the record developed in this proceeding, however, it is found appropriate to price all diverted milk at the plant of actual receipt. Only with this method of pricing is there any reasonable assurance that such milk will be priced in accordance with the provisions of the Act as presently construed.

11. *The Connecticut order differential.* The special classification and pricing arrangement that now exists between the Connecticut and New York-New Jersey order for implementing the "Connecticut order differential" should not be provided under the merged order. In this connection, the order should provide that a dairy farmer shall not be accorded producer status with respect to all of his milk that is diverted during the month to a pool plant under another Federal order if any of such milk is assigned to Class I under the other order and all of such diverted milk would be treated as producer milk under the other order.

Since the inception of the Connecticut order in 1959, a special classification and pricing arrangement has prevailed under Order 15 and Order 2 with respect to bulk milk transferred or diverted from an Order 15 pool plant to an Order 2 pool plant. Presently, the Connecticut order provides that unless the milk is classified as Class I–B under Order 2 such intermarket movements shall be classified as Class II milk, irrespective of whether the milk was assigned to Class II or Class I–A under Order 2. The Connecticut handler is held accountable under Order 15 for such milk at the Class II price.

The complementary provisions of Order 2 provide that such milk received at the Order 2 plant shall be assigned to the extent possible to that plant's Class II utilization. If any of the milk is assigned to Class I–A, the Order 2 plant operator must pay to the Order 2 pool an amount equal to the "Connecticut order differential" times the hundredweight of the Class I–A milk. Such differential is equal to the difference between the Order 15 Class II price and the Order 2 Class I–A price.

This special arrangement was adopted to accommodate the disposal of milk surplus to the fluid needs of the Connecticut market. During the early period of the Connecticut order, relatively limited manufacturing capacity was available in Connecticut for handling the market's unneeded milk supplies. Because of this, it was at times convenient to transfer or divert Connecticut pool milk produced in nearby New York State to local New York distributing plants. Such milk, when used in Class I–A, would displace Order 2 pool milk that otherwise would be moved in from more distant sources. So that this replacement of Order 2 producer milk with Connecticut pool milk would not have an adverse impact on the returns to Order 2 producers, the special classification and pricing arrangement between the two orders was adopted. Such provisions were developed with the concurrence of producer groups in both markets.

A proposal to provide this special arrangement under the merged order was made by three New York based cooperatives that also market milk in the New England area. It was also supported by the proponents of the merged order.

Proponents claimed that the special provisions continue to serve the orderly and efficient handling of milk that is in excess of the fluid needs of the Connecticut market, and that they would serve the same function under the merged order. The cooperatives pointed out that the Connecticut pool milk that moves to the Order 2 distributing plants, however, displaces the normal Order 2 producer supply needed at those plants. When this milk is assigned to Class I–A, they claimed, it results in an equivalent quantity of Order 2 pool milk being assigned to Class II rather than to Class I–A. The cooperatives indicated that in the absence of the Connecticut order differential this would result in a decrease in returns to Order 2 producers.

The adoption of these special classification provisions in the merged order would necessarily mean, of course, an abandonment of the classification procedure now applicable under the Boston order to intermarket movements of bulk milk. The Boston order provides that transfers or diversions of bulk milk to a plant regulated under another order shall be classified in the class or classes to which the milk is assigned under the other order. Under the New York-New Jersey order, such receipts are assigned to Class II milk to the extent a Class II classification is requested and there is sufficient Class II use remaining at the receiving plant to cover the request. Otherwise, such other order receipts are assigned at the Order 2 plant pro rata to the plant's remaining Class I and Class II utilization at this particular step in the allocation procedure.

Only one of these methods of classifying intermarket movements of bulk milk can be adopted under the merged order. Subject to the modification regarding the intermarket diversion of Class I milk, it is concluded for the reasons indicated below that the classification and pricing procedures of the Boston order should be extended to the consolidated market, rather than extending the Connecticut procedure as the cooperatives proposed.

The present procedure for classifying and pricing milk moved from the Connecticut market to Order 2 plants represents a major deviation from the classification and pricing arrangement customarily used under the Federal order program. The more commonly-used procedure was developed on the basis of substantial deliberation by industry and Government and has proved to be a satisfactory means of integrating intermarket movements of milk into the regulatory scheme. Because the procedure is generally applied in a uniform manner throughout the country, it tends to promote equity among all handlers and producers affected by the order program and thus lends strength to the maintenance of a viable regulatory program for producers. For this reason, any deviation from this procedure should be minimized to the extent possible.

The special Connecticut order provisions were adopted to accommodate a very limited situation that prevailed in the Connecticut market many years ago—the lack of adequate manufacturing facilities for handling the market's reserve milk supplies. It is difficult to conclude that this is still a prevailing characteristic of the Connecticut market. Since the adoption of the special assign-

ment provisions, a major manufacturing plant has been built at Newington, Connecticut, and serves as a balancing plant for the entire market.

Also, it is noteworthy that the quantities of milk moved from the Connecticut market to the New York-New Jersey market and assigned to Class I–A have been declining in recent years. Such movements totaled about 26 million pounds in 1972, 24 million pounds in 1973, and 18 million pounds in 1974. A similar pattern existed with respect to such movements from the Boston market to Order 2 plants. In 1972, about 24 million pounds were assigned to Class I–A. Such movements dropped to 13 million pounds in 1973 and to 2 million pounds in 1974.[2] This suggests a decreasing reliance on the Order 2 plants for the disposition of unneeded supplies associated with the New England markets.

The New York producer groups expressed concern that not providing for such differential payments would lower returns to New York-New Jersey producers. It cannot be known at this time what operating adjustments will be made by Connecticut handlers who have been moving milk to Order 2 pool plants subject to the Connecticut order differential. However, it is not likely that there will be any significant impact on returns to Order 2 producers from the elimination of the Connecticut order differential.

The proponent cooperatives reiterated in their exceptions that there continues to be a basis for this differential and that it should be retained. They suggested that the Department, in reaching its conclusions not to continue the differential, erroneously interpreted record data regarding the degree to which New England handlers rely on the Order 2 market as an outlet for unneeded milk supplies. The cooperatives claimed that of the total Class I other Federal order bulk milk received at Order 2 pool plants in recent years, such receipts from New England have represented an increasingly greater proportion of the total. They cited figures of 19 percent for 1971, 43 percent for 1972, 66 percent for 1973, and 80 percent for 1974 with respect to the New England share, and suggested that such data do not support the Department's position.

While we do not question the data cited, we believe that they are not relevant to the issue at hand. It could be possible, for example, that all receipts of other Federal order milk at New York-New Jersey plants be entirely from New England. Such receipts would represent 100 percent of the total other Federal order milk, even if only one truck load of milk were involved. The more pertinent data are those indicating the yearly decline in the quantity of Class I milk moving from the New England markets to Order 2 plants, as previously cited. Such data indicate a decreasing reliance on this marketing arrangement.

The cooperatives objected in their exceptions to the Department's removal of the Connecticut order differential on the basis that the differential departs significantly from the classification and pricing arrangement customarily used under other orders. The cooperatives contended that the issue of order uniformity is not relevant in this case and stressed that the needs of the market require the specially tailored provisions now in use. They claimed that the Act provides for order provisions geared to the local situation and, in support of their position, cited § 608c(11)(C) of the Act, which states: "All orders issued under this section which are applicable to the same commodity or product thereof shall, so far as practicable, prescribe such different terms, applicable to different production areas and marketing areas, as the Secretary finds necessary to give due recognition to the differences in production and marketing of such commodity or product in such areas."

As already indicated, we do not believe that the current marketing situation necessitates the continued use of the special Connecticut order differential provisions. As indicated in the language of the Act just cited, an order shall prescribe provisions different from those in other orders to the extent the Secretary finds this necessary to give due recognition to the differences in the marketing of milk in various areas. With respect to the issue under consideration, such recognition is no longer needed.

The present Boston classification procedure does not accommodate the intermarket movements of milk in quite the same manner as under other orders generally. Milk that is diverted from the Boston market to another market for Class I use continues to remain pooled under the Boston order. Under other orders, such milk is generally treated as a part of the fluid milk supply for the market to which the milk was moved and is therefore pooled under the order regulating the handling of milk in that market. This procedure should be adopted for the New England market.

The orderly and efficient handling of reserve milk in the New England market may be facilitated at times by moving the milk of individual producers directly to plants regulated under the New York-New Jersey order. Such movement of milk from the farm to the plant of ultimate disposition avoids the expense and handling which would otherwise result if the milk were delivered to the New England pool plant where it is normally received and then transferred to the other order plant. When such milk is diverted for Class II use to the other order plant, it can be presumed to be a part of the New England market's reserve milk supply and the burden of carrying such supply appropriately should not be shifted to the receiving market. Such movements therefore should be treated as a diversion of producer milk from the New England market and such diverted milk should continue to be pooled under the merged order.

When reserve milk not needed in the New England market is diverted to another order market for surplus disposition, it presumably will be classified as Class II milk under the other order. However, in the event that the receiving handler does not have sufficient Class II utilization to cover the diversion of milk from the New England market, a portion of the milk so moved would necessarily be assigned to Class I milk. In such a situation, it can no longer be presumed that the diverted milk is in fact a surplus disposal. When part or all of the milk is used for fluid purposes in the receiving plant, the milk obviously is needed for fluid use in the receiving market and should be considered a part of that market's fluid supply. Thus, all of the milk diverted to the other order plant that is determined to have shared in the receiving plant's Class I utilization should not be treated as producer milk under the New England order but instead should be accounted for and priced under the other order.

As pointed out by exceptors, however, special consideration must be given to diversions to New York-New Jersey pool plants. Under Order 2, farm bulk tank milk must be a part of a pool or partial pool bulk tank unit to be pooled under the order. In the case of a partial unit, not all of the milk in the unit is pooled, and some of the dairy farmers involved thus would not be producers under Order 2. In this situation, the denial of producer status under the New England order for such a dairy farmer would cause him to be treated as a "dairy farmer for other markets" with respect to his deliveries under the New England order to the diverting handler. To avoid this result, the denial of producer status under the New England order with respect to milk diverted to another order market should be conditioned on the dairy farmer acquiring producer status under the other order with respect to such milk.

12. *Pricing adulterated milk.* A proposal to eliminate a handler's minimum-payment obligation to producers or cooperatives for milk that was adulterated or misbranded (within the meaning of the Food, Drug and Cosmetic Act) at the time of receipt should be denied. In this connection, however, the merged order should permit a cooperative association to replace certain rejected milk that it caused to be delivered to a handler's plant without the rejected milk being treated for classification and pricing purposes as a receipt at the plant.

Handler organizations in the Connecticut and Boston markets proposed certain changes in the present orders that would relieve handlers from making required payments under the order for milk received from dairy farmers or cooperatives that is later found to have been adulterated or misbranded at the time of receipt. To implement this, handlers proposed that the producer definition exclude any "dairy farmer with respect to

[2] Official notice is taken of the October, November, and December 1974 uniform price announcements issued by the market administrator of the New York-New Jersey order.

milk which he offers for sale to a handler, if it is later established by appropriate records or otherwise that at the time of its receipt by the handler the milk was adulterated or misbranded within the meaning of the Federal Food, Drug and Cosmetic Act, as amended." Handlers proposed, however, that the withholding of producer status for this reason be at the option of the handler receiving the milk.

The handler groups also proposed that handlers be relieved of payments to a cooperative association for certain receipts from the association's pool plants or from the association in its capacity as a handler for farm bulk tank milk. As proposed, payment would not be required for "receipts of milk or other fluid products as to which it is established by appropriate records or otherwise that at the time of receipt by the handler the milk was adulterated or misbranded within the meaning of the Federal Food, Drug and Cosmetic Act, as amended."

The handlers further proposed that the receipt of such adulterated or misbranded milk be treated for assignment and pricing purposes in the same manner as provided now under the Boston order for milk from dairy farmers that the handler rejects and disposes of as salvage product. Under this arrangement, the milk would be assigned to the handler's Class II utilization. Should any of the milk be assigned to Class I milk, the handler would be obligated to the pool for such milk at the difference between the Class I and Class II prices.

In their testimony, handlers indicated that the basic problem concerning them is the receipt of milk containing penicillin, a bacterial inhibitor used by dairy farmers in the treatment of cows afflicted with mastitis. Proponents testified that under the Food, Drug and Cosmetic Act milk containing penicillin is considered to be adulterated milk and therefore not approved for sale to the public. Since such adulterated milk is not readily detected, handlers may unknowingly receive, process and dispose of such milk to consumers. In doing so, proponents claimed, a handler may be disposing of milk considered to be injurious to the public health while at the same time violating the law, with the handler thereby becoming liable to criminal prosecution and adverse publicity.

Moreover, proponents contended, the receipt of milk containing penicillin may cause substantial financial losses for a handler. It was pointed out that by the time it is determined that milk picked up from individual producers contains penicillin, the milk already has been commingled in the truck with other milk and probably has been commingled with still other milk in storage tanks at the plant. Therefore, the milk that necessarily must be disposed of because of adulteration includes not only the milk of the producer who was using penicillin but all other milk with which it was commingled. In similar manner, proponents claimed, receipts of penicillin-contaminated milk from a cooperative can involve large quantities of milk since deliveries of milk to a handler's plant are in tanker-load lots and such milk is often stored with other milk before processing.

Handlers indicated that once the adulterated milk is isolated it must be moved at additional expense to manufacturing plants. They testified that although some value can be recovered from the butterfat portion of the milk the skim milk portion is not saleable. Presently, it was noted, such skim milk in most cases is being processed into nonfat dry milk and placed in storage until such time as some satisfactory method is developed for "reconditioning" it for sale. Proponents claimed that considerable quantities of such powder are now in storage at great expense to the handlers and cooperatives involved.

Proponents pointed to still other costly problems that arise from the receipt of penicillin-contaminated milk. Plant operations are disrupted when such milk must be segregated and held until it may be moved elsewhere, and when replacement milk must be obtained. Antibiotics in milk interfere with cheese cultures, with a resulting loss of the cheese milk, a disruption in production schedules and labor overtime. Also, they noted, the production of acid and flavor during the processing of buttermilk and yogurt may be impaired.

Proponents testified that for the reasons just outlined handlers are anxious to avoid the receipt of milk containing penicillin. They indicated, however, that aside from the producer's own awareness of the situation the only way of knowing whether milk has penicillin in it is to subject the milk to laboratory tests for bacterial inhibitors. It was pointed out that the minimum test time is 4 hours and that such test provides only a tentative indication of penicillin. A more sensitive and accurate test takes 14 to 24 hours. Proponents noted that it is becoming a common practice in the market for handlers and cooperatives to run the "short" test on each truck load of milk that comes from the farm. If the test is positive, then a "long" test is run on the milk of each producer involved with that truck load. The long test, proponents indicated, clearly identifies the producer that shipped penicillin-contaminated milk. It was pointed out, however, that because it is seldom feasible to delay the unloading of trucks for even the 4 hours needed for running the short test, the adulterated milk usually is already in the handler's plant, and perhaps even processed, by the time the penicillin is detected.

Handlers claimed that since they are unable to determine at the time of pick up at the farm whether or not the milk is penicillin-free, they must assume that any milk offered for sale by a producer who has the proper health certificate is qualified for fluid use. Notwithstanding, they know that on occasion some producers, either intentionally or through carelessness, do ship milk containing penicillin. It was pointed out that Federal, state and local health laws provide stringent standards for the use of bacterial inhibitors such as penicillin, including the length of time that must elapse before milk produced by a cow treated with the inhibitor may be offered for sale by the producer. Handlers claimed, however, that there is little enforcement of these standards and thus little incentive for producers to comply with the present health regulations regarding the use of penicillin.

It is because of the absence of any real incentive for compliance, handlers stressed, that they are seeking certain relief from the payment provisions of the order. The handlers indicated that they are not seeking compensation from producers or cooperatives for the total losses that they incur because of adulterated milk. Instead, they are merely proposing a type of penalty that will discourage producers from marketing adulterated milk.

Proponents pointed out that some handlers and cooperatives in New England already are imposing various types of penalties on producers who market penicillin-contaminated milk. For example, cooperatives, through the exercise of their reblending privileges, are withholding payments to members who ship adulterated milk. It was noted that proprietary handlers, on the other hand, are not able to do this since the order requires them to make minimum payments for milk received from producers and cooperatives. Proponents claimed that handlers thus are basically limited to not accepting milk from a producer, either for a limited period of time or indefinitely, following the receipt of penicillin-contaminated milk from the producer. Proponents stressed that this penalty arrangement tends to place handlers at some disadvantage relative to cooperatives in holding producers.

The payment proposal was supported by two national handler organizations with members in both the Boston and Connecticut markets. The witness for the national groups presented supporting testimony that largely paralleled the presentation made on behalf of the local handler groups.

Cooperative associations opposed any action that would relieve handlers of making minimum payments to producers and cooperatives for adulterated milk. The cooperatives indicated that they, along with handlers, are very much concerned about the incidence of penicillin-contaminated milk in the milk supply. It was their position, however, that the proposal of the handler groups was not a proper means for remedying the problem. Opponents contended that the problem was not a pricing problem under the order but rather a problem to be corrected by the appropriate health authorities. They claimed that the proposed authorization under the order for withholding payments to producers and cooperatives would be a punitive measure and as such would go beyond the intended purpose of the order.

Cooperatives also expressed concern that the proposal would not require handlers to pay for adulterated milk even though they actually may have used the

milk and recovered its full value through the distribution of the milk to the public. The cooperatives also claimed that if the reporting of a receipt of adulterated milk was optional on the part of a handler, the handler could use this as a competitive device in the procurement of milk.

The cooperatives further contended that steps are being taken in the market to reduce the incidence of penicillin in milk. They pointed to the penalty programs being implemented by both cooperatives and proprietary handlers. They also noted that the various states are stepping up their efforts to provide more effective enforcement programs. The cooperatives claimed that these various measures are reducing the penicillin problem and are the appropriate means for dealing with adulterated milk.

Without question, the milk industry has cause for being concerned about the marketing of milk containing penicillin or other harmful adulterants. The consequences that may arise from such milk getting into the normal marketing channels can be significant for handlers, cooperatives, individual producers and the public. The testimony of handlers, as previously described, amply portrayed the disruption to the normal marketing process and the substantial financial loss that may occur when just a single producer, unintentionally or otherwise, markets milk containing penicillin.

The problem of penicillin-contaminated milk is particularly difficult because under present technology there is no way of detecting the presence of the bacterial inhibitor in the milk without running a laboratory test for a minimum of 4 hours. This precludes a handler from knowing at the time he accepts milk from a producer whether or not the milk is penicillin-free. For all practical purposes, total reliance must be placed on the individual producer that the milk is of marketable quality.

Unfortunately, producers using penicillin for the treatment of mastitis do not always withhold from the market a sufficient number of milkings from a treated cow. Normally, up to 72 hours must elapse after injection of the penicillin before traces of the bacterial inhibitor will be absent from the cow's milk. Only then is the milk safe for marketing in normal channels.

The withholding of milk by the producer represents, of course, a reduction in his income. Thus, there is a strong economic incentive to begin marketing milk from the treated cow as soon as possible. With this incentive, some producers occasionally are inclined to market milk from treated cows before the prescribed withholding time has elapsed. In other cases, the premature shipment of milk may result from inadequate identification of treated cows, a lack of adequate communication among the farm help regarding treated cows, or some other form of carelessness.

The frequency of premature shipments in the New England area was not indicated on the record. However, the operator of a number of pool plants under the two orders indicated that during the past five years about 1 out of every 500 producer samples was found to contain some kind of bacterial inhibitor, although not necessarily penicillin. It was indicated that the rate of incidence now is somewhat less than this.

With the individual producer being the source of the problem, it is understandable why handlers seek to impose under the order an economic sanction on producers who market adulterated milk. Handlers hope, of course, that the withholding of payments to producers for any such milk would be a strong inducement for producers never to offer to handlers milk that is not of marketable quality. Presumably, nonpayment for milk would be an effective deterrent in this regard. Nevertheless, it is questionable whether the order and its pricing provisions are a proper means of enforcing, in effect, the health laws that are under the jurisdiction of other agencies, in spite of the obvious need for eliminating the incidence of penicillin-contaminated milk.

The Boston and Connecticut orders do not establish any criteria concerning the quality of milk that is eligible for pooling under each order. Plants handling milk for fluid use must have the necessary health approval from state or local authorities. Similarly, producers must meet various health inspection requirements of such authorities if their milk is to be distributed to consumers. It is presumed, then, that milk that is received at such plants from dairy farmers is approved for fluid distribution. On this basis, such milk is pooled and priced under the orders. Any milk that is excluded from the fluid market because of health approval reasons is excluded at the direction of the appropriate health authority, not because of any provision of the order.

It may be noted that a number of other Federal orders do contain provisions requiring pool plants and producers to have from the appropriate health authority approval for the production and handling of milk for fluid consumption. Similar provisions were included at one time in the New England orders. Such provisions, however, do not establish the inspection standards that must be met, nor do they give the market administrator the authority to determine whether or not a dairy farmer or plant meets any health standards. Instead, the orders merely provide that once the appropriate health authority has granted or not granted the necessary health approval, the market administrator then determines from this whether or not the plant or producer is eligible for pooling under the order. Thus, in the case of orders generally, the basis on which a dairy farmer is eligible from a health approval standpoint to supply the fluid market is outside the scope of the order.

Under the proposal offered by the handler groups, this would not be the case. As proposed, a dairy farmer would be ineligible to be a producer under the order with respect to certain milk delivered to a handler on the basis of the handler's claim that the milk was later found to have been adulterated at the time of receipt, with the Food, Drug and Cosmetic Act to be used as the guide for determining adulteration. Thus, with respect to such milk, the exclusion of the dairy farmer from the fluid market because of an alleged failure to meet certain health standards would be under the terms of the order and not on the basis of the authority having jurisdiction over any adulteration laws applicable in the market. This, in effect, would place the market administrator in the position of enforcing health laws that are the responsibility of other agencies. The proposal thus would result in an inappropriate expansion of the scope of the order.

Even with this facet of the issue aside, serious question must be raised as to whether the proposal could effectively resolve the problems that handlers are experiencing. Obviously, the desired result is the total absence of adulterated milk in the normal marketing channels. The proposal would not assure this. Nonpayment for milk containing penicillin presumably would be an incentive for a producer not to market contaminated milk, but it would not preclude this from actually happening. When it does happen, the handler could incur, because of commingling, a substantially greater loss of milk than just the milk of the individual producer using penicillin. This additional loss would not be covered by the payment withheld from the single producer. Proponents recognized this in indicating that the intent of the proposal was not to compensate handlers for the total financial loss that they might incur from the receipt of adulterated milk.

Proponents indicated that the purpose of the proposal was to provide an economic deterrent to the marketing of adulterated milk by producers. Handlers already are in a position to employ various economic measures outside the scope of the order for this purpose, and in fact are doing so. One major New England handler has a policy, for example, of not buying milk from a producer for two days after the receipt of adulterated milk. If this is followed within six months by a second occurrence, the handler does not buy milk from the producer for the next 12 months. The handler indicated that this has been a very strong inducement to producers not to market penicillin-contaminated milk. Handlers also have recourse in the courts, although they apparently have not been inclined to resort to this approach.

It is apparent that handlers are reluctant to be severe on their own initiative in their approach to eliminating the marketing of adulterated milk. Proponents indicated that the use of various economic measures by a handler tends to cause producers to seek other handlers who may be less restrictive in their buying practices. This may be so. Nevertheless, the handler must weigh this against the potential losses that he may experience from the receipt of adulterated milk. Presumably, the severity of his buying

practices will be commensurate with the risk he believes adulterated milk poses for him.

In conclusion, the issue of adulterated milk is basically a public health matter. The responsibility for carrying out the laws regarding such milk is vested in specific regulatory agencies, primarily those of the various New England states. Witnesses indicated that such agencies are now taking additional steps to reduce the incidence of adulterated milk. Although it is too early to evaluate the effectiveness of their efforts, the enforcement of the health laws remains as the proper regulatory approach to the elimination of adulterated milk.

The proponent handler groups and the supporting national handler organizations filed exceptions to these conclusions. They reiterated their position taken at the hearing that handlers should not be required to pay producers and cooperatives for adulterated milk. Handlers contended that the intent of the Agricultural Marketing Agreement Act is to price only "pure and wholesome milk," and not a product that cannot legally be offered for sale by dairy farmers. They indicated that the order should not encourage producers to ship adulterated milk through provisions that require handlers to pay for such milk. Moreover, it was the position of handlers that their proposal was not intended to result in the market administrator enforcing the health laws. Instead, his function would be merely that of verifying that adulteration had been determined by a certified laboratory or official health authority.

These several points raise no new aspects not already considered in reaching a conclusion on the handlers' proposal. The decision not to change the current regulatory treatment of adulterated milk, except for the minor modification noted below, is consistent with the current marketing practices in New England and the regulatory activities of the health authorities having jurisdiction in that area.

In their exceptions, the national handler organizations requested that if the Department concluded in this proceeding that the record does not support the exclusion of adulterated milk from a handler's obligation a hearing be called to consider this issue on a national basis. In this regard, the consideration of such a request is outside the scope of this proceeding. A request of this nature may be pursued by the parties through a formal petition to the Department, indicating the reasons why such a hearing is necessary.

In connection with the issue of adulterated milk, a limited accommodation under the merged order should be made with respect to the treatment of unmarketable bulk milk that a cooperative delivers to a handler's plant. If it is determined subsequent to the time of receipt that the milk at the time of receipt was not of the quality represented by the cooperative, the order should permit the cooperative to pick up the milk and replace it without the plant operator, under the terms of the order, being held responsible for the payment of the rejected milk.

Handlers were particularly concerned that the present orders do not accommodate any mutual settlement between a handler and a cooperative for unmarketable milk that the cooperative may have delivered to the handler. They indicated that although the cooperative may be willing to forego payment the orders nevertheless require the handler to make certain minimum payments to the cooperative for the milk.

For the reasons already described, it is quite possible that a handler may receive milk from a cooperative without knowing, for example, that at the time of receipt the milk contained penicillin. Following discovery of the contamination, the cooperative may be desirous of replacing this milk with a new supply of marketable milk. To the extent that the rejected milk is withdrawn from the plant in bulk form by the cooperative, such milk should not be treated for pricing purposes as a receipt at the plant. Only the milk subsequently delivered as the replacement supply should be classified and priced at the handler's plant. The cooperative, of course, will be the responsible handler for the milk withdrawn.

Although this arrangement will be particularly adaptable to accommodating the problems of handling penicillin-contaminated milk, it is possible that milk delivered by a cooperative is found to be unmarketable for other reasons. The basic situation intended to be covered is where it is ascertained after the milk has been received at the plant that the milk, in fact, was not of marketable quality at the time it was delivered.

It is appropriate to require that this arrangement include the replacement of the rejected milk and not merely its withdrawal from the plant. This will tend to minimize any bargaining pressures upon the cooperative by the handler in those cases where the quality issue possibly may be a borderline case, or where the handler may wish to use the quality issue as a pretense for disposing of an over-supply of milk. Although it is recognized that there may not be a precise replacement of milk in terms of volume or butterfat, it is expected, nevertheless, that the spirit of the initial purchase arrangement will be carried out. To this end, it is intended that the replacement shall approximate the original purchase.

Because of the uniqueness of this arrangement, the market administrator should have an opportunity to review the circumstances surrounding any rejection and replacement of milk prior to its removal from the plant. Accordingly, the handler should notify the market administrator, in the manner prescribed by him, of any impending replacement of milk.

Handlers and cooperatives objected in their exceptions to the adoption of the milk replacement provisions. Their basic contention was that such provisions would reduce the flexibility they now have with respect to various inter-handler transactions. Handlers also stressed that since a cooperative would not be required to replace unmarketable milk the new provisions would serve no real purpose.

It is not intended that the milk replacement provisions limit the marketing arrangements that handlers and cooperatives are now able to pursue under the terms of the order. Rather, such provisions would permit an additional arrangement should the parties involved wish to use it. The unique feature of this particular arrangement, however, is that the handler would not be required to pay for the unmarketable milk that was replaced.

13. *Charges on overdue accounts.* No change should be made in the charge now applicable under the individual orders to overdue accounts. Presently, each order applies a charge on overdue payments of one percent per month (12 percent annually) effective the day after the payments are due.

At the hearing, the merger proponents modified their initial proposal and supported a charge of 1.5 percent per month rather than the one percent rate. They indicated that following the submission of the merger proposal interest rates increased significantly, with the prime rate reaching 12 percent, and that such increases should be reflected in the charge on overdue accounts under the order. Proponents contended that when the charge under the order is lower than alternative commercial loan rates, handlers who may be having financial problems are encouraged to delay their payments, knowing that this is cheaper than borrowing money commercially at the higher loan rate.

It is essential that all handler payments to the producer-settlement fund be made promptly so that the market administrator will be able to make the required payments from such fund. This is necessary so that producers can be paid on a timely basis. The charge on overdue accounts provides an incentive to handlers to make their payments on time. Moreover, handlers who pay late are, in effect, borrowing money from producers. Without a charge, handlers delinquent in their payments would have a financial advantage relative to those handlers making timely payments.

Conditions in the New England market do not support at this time the need for a higher charge under the order on overdue obligations. The present charge of one percent per month has been adequate to assure timely payments. Proponents indicated that the payment record of handlers in the two New England markets has been very good. No specific problems regarding late payments were cited on the record.

Although the prime interest rate at the time of the hearing was higher than previously, such rate is now at a lower level.[4]

[4] Official notice is taken of page 5 of the March 1975 issue of "Survey of Current Business" published by the U.S. Department of Commerce, Social and Economic Statistics Administration, Bureau of Economic Analysis.

In view of this, the adoption of a higher charge under the merged order on overdue obligations is not appropriate. It should be noted that the present charge in New England already exceeds the charge applicable under most Federal orders, and none is higher.

14. *Settlement of payment errors.* The Boston order provisions regarding the settlement of payment errors should be retained in essentially their present form.

A basic part of the market administrator's responsibilities is to audit handlers' records to verify that each handler has made accurate reports and proper payments to the market administrator and to producers. It is not unusual for such audits to disclose an error in a handler's obligation, with a payment adjustment due either to or from the handler. Both the Connecticut and Boston orders now prescribe a time schedule for settling such payment errors.

As adopted herein, the merged order would require that any audit billings made to a handler by the 10th day of the month would be due on or before the 18th day of the month. Audit credits due a handler from the producer-settlement fund, if determined by the 10th of the month, would be due by the 20th of the month. These dates coincide with the dates by which monthly equalization payments to and from the producer-settlement fund are made by handlers and the market administrator.

A handler representative asked that handlers be given at least 25 days to review audit billings issued by the market administrator. He proposed that only those billings issued prior to the current month be due that month, and then not until the 25th of the month. Proponent indicated that such a schedule would facilitate the working arrangement he now has with a handler in the Connecticut market. This includes making out the handler's report and reviewing any audit billings prior to the handler's settlement of the billings with the market administrator. Proponent claimed that he customarily is not at the handler's plant between the 10th and 18th of the month, a time under the adopted schedule when audit adjustments might need to be reviewed.

The problem described by proponent does not warrant a change in the audit billing schedule. The present schedule has been applicable for quite some time and apparently has been a satisfactory arrangement for the industry. No other objections regarding this schedule were expressed at the hearing. From the record, it appears that there are alternatives available to proponent for accommodating his problem that do not require a change in the order provisions. The record indicates that he is aware of such alternatives and they need not be outlined here.

15. *Rate of marketing service deduction.* The merged order should continue the maximum deduction from producer payments of 3 cents per hundredweight for marketing services furnished by the market administrator to producers for whom a cooperative association is not performing similar services. The individual orders now provide for a maximum deduction of 3 cents per hundredweight for marketing services, with a lesser deduction permitted if found appropriate. The maximum 3-cent rate has been collected under both orders during the past several years.

Cooperatives proposed that the merged order provide for a maximum deduction for marketing services of 5 cents per hundredweight. Proponents indicated that under the current inflationary conditions the higher permissible deduction is necessary to assure the continuation of an adequate marketing service program. No financial data were presented, however, regarding the operation of the current program.

A handler who receives milk from a substantial number of producers who are not members of a cooperative association indicated that any increase in deductions for marketing services should be based on a demonstrated need for greater financial support for carrying out the marketing service program.

No information to substantiate the need for such an increase was provided at the hearing. Hence, there is no basis on this record to increase the maximum rate of deductions under the order. Accordingly, the proposal is denied.

In their exceptions, cooperatives contended that a higher rate is justified since no significant reserve funds are being accumulated under the present marketing service programs. This, in itself, is not necessarily an indication that a higher rate of deduction is necessary. A change in such rate should be based on information regarding actual limitations on the program because of insufficient funds.

16. *Increasing the producer-settlement fund reserve.* The Boston order now provides that part of the monthly pool value be set aside to maintain a reserve in the producer-settlement fund. This deduction is between 4 and 5 cents per hundredweight of milk. This reserve is used for making payments to handlers on the basis of audit adjustments, and also as limited protection against late payments to producers in the event a handler is late in settling with the producer-settlement fund. The order specifies that when the next month's blended price is computed, any remaining unobligated balance in the reserve fund shall be included in that month's pool value.

Similar procedures are prescribed by the Connecticut order. However, in this case, only one-half of the unobligated balance is added back to the pool value each month.

Cooperatives proposed that the latter procedure be used under the merged order rather than the arrangement now applicable in the Boston market. In this way, the reserve fund would be maintained at nearly twice the amount as under the Boston procedure. There was no opposition from producers to the proposal.

In view of the general trend toward fewer but larger processing operations, it appears reasonable that a somewhat larger reserve fund be maintained than would result from a continuation of the Boston order provisions. This will tend to assure all necessary payments from the producer-settlement fund on a timely basis.

In this connection, the merged order should provide that if the unobligated balance in the producer-settlement fund is insufficient for making the equalization payments to handlers, the market administrator shall reduce uniformly such payments. The payments should then be completed as soon as the funds are available. In similar manner, a handler should be permitted to reduce uniformly his payments to producers if the market administrator is late in making full payment to the handler from the producer-settlement fund.

This procedure is provided in the present Connecticut order. It is not in the Boston order and was not proposed for the merged order. Proponents of the merged order contended that such provisions are unnecessary since the market administrator has never made a late payment from the producer-settlement fund under either order.

The very favorable payment record does not preclude, of course, a late-payment situation from occurring in the future. For this reason, the provisions outlined above should be included in the merged order. This way, the situation may be dealt with under the terms of the order rather than on the basis of an administrative ruling.

The merged order also should provide that the market administrator may use monies due a handler from the producer-settlement fund to offset unpaid amounts that the handler owes to either the producer-settlement fund, the administrative expense fund, or the marketing service fund. The present orders permit an offset of just the amount due the producer-settlement fund. Cooperatives urged the broader offset provisons adopted herein. There was no opposition to the proposal.

It is essential to the functioning of an order that all obligations of a handler be paid at the prescribed times. Should a handler be delinquent in the payment of an order obligation, the market administrator must take whatever steps are necessary to obtain payment from the handler. It would be totally inconsistent in this situation to require a payment to the delinquent handler when the handler in fact owes money to the market administrator. In this case, there is no basis for limiting the offset to just those payments associated with the same fund. It is just as essential that amounts due the marketing service fund or the administrative expense fund be collected as those due the producer-settlement fund.

17. *Handler reports.* The reporting provisions of the Boston order should be retained under the merged order with minor changes. As proposed by the cooperatives, the order should include provisions for the reporting of dumpage by handlers. Each handler who dumps fluid milk products should be required to give

the market administrator, at his request and in accordance with his instructions, advance notice of the handler's intention to dump such products and the quantities involved. This will give the market administrator an opportunity to verify the dumping if he chooses to do so. If the market administrator considers that supplemental reports of such dumpage are necessary, he may require the handler to file them.

Certain reports to the market administrator concerning so-called producer additions and withdrawals should be simplified. Each handler should report to the market administrator by the 15th day after the end of the month applicable information with respect to producers from whom the handler started or stopped receiving milk and changes in farm locations and farm operators. Presently, the two orders require more frequent reporting with respect to these matters.

The merged order should require handlers who receive milk from producers to provide such producers certain information regarding the weights and tests of the milk received. In the case of producers shipping bulk tank milk, a receipt showing the farm tank measurement and the conversion to pounds should be left with the producer each time milk is picked up by the handler. If milk is picked up in cans, the producer should be notified of the quantity received within 3 days after receipt of the milk.

Neither order now requires that bulk tank weight slips be left at the farm when the milk is picked up. However, this is a common practice among New England handlers and will not be a new procedure for most of them. Providing for this procedure under the order will assure all bulk tank producers of a timely record of the quantities of milk being marketed.

Recognition should be given to the use of fresh milk samples for determining the butterfat test of a producer's milk. Presently, the orders require that handlers notify producers of the test results determined from composite milk samples. About half of the producer milk under the two orders is now tested from fresh milk samples, and the practice is expected to increase. It is appropriate, therefore, that a handler be required to notify each of his producers of the average butterfat test for the month as determined from the fresh milk samples for each such producer. Notification should be in writing within 10 days after the end of the month. Because 10-day sampling periods are being used, it is possible that some handlers may notify producers of their butterfat tests at the end of each period. In this case, there is no need for the notice to the producer indicating his average test for the month, and this should not be required in this situation.

18. *Merger of the administrative expense, marketing service, and producer-settlement funds.* To accomplish the merger of the two New England orders effectively and equitably, the reserves in the administrative expense funds that have resulted under the individual orders should be combined. Similar procedure should be followed with respect to the marketing service and producer-settlement fund reserves of the individual orders. Any liabilities of such funds under the individual orders should be paid from the appropriate new fund established under the merged order. Similarly, obligations that are due the several funds under the individual orders should be paid to the appropriate combined fund under the merged order.

The money paid to the administrative expense fund is each handler's proportionate share of the cost of administering the order. It is anticipated that all handlers currently regulated under the individual orders will continue to be regulated under the merged order. In view of this, it would be an unnecessary administrative and financial burden to allocate back to handlers the reserve funds under the individual orders and then accumulate an adequate reserve for the merged order. It would be equitable and more efficient to combine the administrative monies accumulated under the individual orders and to pay any liabilities against such funds from the consolidated fund of the merged order.

The money accumulated in the marketing service funds of the individual orders is that which has been paid by producers for whom the market administrator is performing services. The producers who have contributed to the marketing service fund of each order are expected to continue to supply milk for the New England market. The consolidation of the reserves in the individual marketing service funds is therefore appropriate in view of the continuation of the marketing service program for these producers under the merged order.

The producer-settlement fund balances of the two orders should be combined so that the producer-settlement fund under the merged order may be continued without interruption. The producers currently supplying the individual markets are expected to continue to supply milk for the merged New England market. Thus, monies now in the producer-settlement funds of the individual orders will be reflected in the uniform prices of the producers who will benefit from the merged order. The combined fund will also serve as a contingency fund from which money will be available to meet obligations (resulting from audit adjustments and otherwise) accruing under one or the other of the separate funds.

19. *Changes in the New York-New Jersey order.* Proposed amendments to the New York-New Jersey order (Order 2) were limited basically to those provisions that now contain references to the Connecticut order. Such references have been necessary to implement the special pricing arrangement between the Connecticut and New York-New Jersey orders known as the Connecticut order differential. The concept of this arrangement has been explained under Issue 11, which deals at length with the Connecticut order differential. In conjunction with their proposal to continue this special pricing arrangement, the cooperatives proposed that the references in Order 2 to the Connecticut order be changed to reflect the adoption of the New England order.

Since it has been concluded that this special pricing arrangement should not apply under the merged order, it is necessary to make certain conforming changes in Order 2. These include the revocation of § 1002.52, which sets forth the amount of the Connecticut order differential, and the several references to Part 1015, which is the Connecticut order.

Additional consideration was given at the hearing to the modification or deletion of one of the pooling provisions of Order 2. The order now provides in § 1002.28(f)(3) that a plant that was a pool plant under the Connecticut order in each of the months of July through November shall not be a temporary pool plant under Order 2 during the following months of December through June. This provision was adopted to preclude a supply plant that was pooled in the Connecticut market during the short-production season from becoming a pool plant in the New York-New Jersey market during the period of heavy production when the milk is not needed.

The merger of the Connecticut order with the Boston order makes some action regarding this provision appropriate since the provision specifically relates to the Connecticut order. As generally urged by witnesses at the hearing, the pooling provisions should be revoked. The provision was intended to have applicability only to plants associated with the Connecticut market, not to other markets. Actually, the provision is not being used since there are no supply plants pooled under the Connecticut order. Although the provision could be changed to apply to the merged order, there is little practical use for doing so. Since producer prices in the New England markets have been higher than producer prices in the New York-New Jersey market, and this likely will continue under the merged order, there will be no incentive for supply plants to become pooled in the Order 2 market.

In addition, the merged order provides automatic pool plant status during the months of December through June for any supply plant that qualified as a pool supply plant in each of the immediately preceding months of July through November. Since the merged order provides continuing pool plant status in the flush milk production months for a supply plant furnishing the market's needs in the months of short milk production, such a plant should not be considered as a pool plant under Order 2 during the months in which such a plant is afforded automatic pool status under the merged order.

Rulings on Proposed Findings and Conclusions

Briefs and proposed findings and conclusions were filed on behalf of certain interested parties. These briefs, proposed findings and conclusions and the evi-

dence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

GENERAL FINDINGS

The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of each of the aforesaid orders and of the previously issued amendments thereto; and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

The following findings are hereby made with respect to the tentative marketing agreement and the order for the proposed New England marketing area:

(a) The tentative marketing agreement and the order for the New England marketing area, which amends and merges the Boston Regional and Connecticut orders, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(b) The parity prices of milk as determined pursuant to section 2 of the Act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the New England marketing area, and the minimum prices specified in the tentative marketing agreement and the order for the New England marketing area are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest;

(c) The tentative marketing agreement and the order for the New England marketing area will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, the marketing agreements upon which a hearing has been held;

(d) All milk and milk products handled by handlers, as defined in the tentative marketing agreement and the order for the New England marketing area are in the current of interstate commerce or directly burden, obstruct, or affect interstate commerce in milk or its products; and

(e) It is hereby found that the necessary expense of the market administrator for the maintenance and functioning of such agency will require the payment by each handler, as his pro rata share of such expense, 4 cents per hundredweight, or such lesser amount as the Secretary may prescribe, with respect to milk specified in § 1001.85 of the tentative marketing agreement and the order for the New England marketing area.

The following findings are hereby made with respect to the tentative marketing agreement and the order for the New York-New Jersey marketing area:

(a) The tentative marketing agreement and the order, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(b) The parity prices of milk as determined pursuant to section 2 of the Act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the marketing area, and the minimum prices specified in the tentative marketing agreement and the order, as hereby proposed to be amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(c) The tentative marketing agreement and the order, as hereby proposed to be amended, will regulate the handling of milk in the same manner as; and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, a marketing agreement upon which a hearing has been held.

RULINGS ON EXCEPTIONS

In arriving at the findings and conclusions, and the regulatory provisions of this decision, each of the exceptions received was carefully and fully considered in conjunction with the record evidence. To the extent that the findings and conclusions, and the regulatory provisions of this decision are at variance with any of the exceptions, such exceptions are hereby overruled for the reasons previously stated in this decision.

MARKETING AGREEMENT AND ORDERS

Annexed hereto and made a part hereof are two documents, a Marketing agreement regulating the handling of milk, and an order amending and merging the orders regulating the handling of milk in the Boston Regional and Connecticut marketing areas. Also annexed hereto and made a part hereof are two additional documents, a marketing agreement regulating the handling of milk, and an ORDER amending the order regulating the handling of milk in the New York-New Jersey marketing area. Such documents have been decided upon as the detailed and appropriate means of effectuating the foregoing conclusions.

It is hereby ordered, That this entire decision, except the attached marketing agreements, be published in the FEDERAL REGISTER. The regulatory provisions of the marketing agreements are identical with those contained in the respective orders as hereby proposed to be amended by the attached orders which are published with this decision.

DETERMINATION OF PRODUCER APPROVAL AND REPRESENTATIVE PERIOD

September 1975 is hereby determined to be the representative period for the purpose of ascertaining:

(1) Whether the issuance of the New England order, which amends and merges the orders, as amended, regulating the handling of milk in the Boston Regional and Connecticut marketing areas, is approved or favored by producers, as defined under the terms of the attached New England order, who during such representative period were engaged in the production of milk for sale within the marketing area defined in the attached New England order; and

(2) Whether the issuance of the order, as amended and as hereby proposed to be amended, regulating the handling of milk in the New York-New Jersey marketing area, is approved or favored by producers, as defined under the terms of the New York-New Jersey order (as amended and as hereby proposed to be amended), who during such representative period were engaged in the production of milk for sale within the New York-New Jersey marketing area.

Signed at Washington, D.C., on: January 26, 1976.

RICHARD L. FELTNER,
Assistant Secretary.

Order[1] *amending and merging the orders, regulating the handling of milk in the Boston Regional and Connecticut marketing areas.*

FINDINGS AND DETERMINATIONS

The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of each of the aforesaid orders and of the previously issued amendments thereto; and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) *Findings.* A public hearing was held upon certain proposed amendments to the tentative marketing agreements and to the orders regulating the handling of milk in the Boston Regional and Connecticut marketing areas. The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and the applicable rules of practice and procedure (7 CFR Part 900).

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The New England order, which amends and merges the aforesaid orders, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the New England marketing area, and the minimum prices specified in the New

[1] This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

England order are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest;

(3) The New England order regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in, the marketing agreements upon which a hearing has been held;

(4) All milk and milk products handled by handlers, as defined in the New England order, are in the current of interstate commerce or directly burden, obstruct, or affect interstate commerce in milk or its products; and

(5) It is hereby found that the necessary expense of the market administrator for the maintenance and functioning of such agency will require the payment by each handler, as his pro rata share of such expense, 4 cents per hundredweight, or such lesser amount as the Secretary may prescribe, with respect to milk specified in § 1001.85 of the attached New England order.

Order relative to handling. It is therefore ordered that on and after the effective date hereof the orders regulating the handling of milk in the Boston Regional and Connecticut marketing areas (Parts 1001 and 1015, respectively) shall be amended and merged into one order. Part 1015 is thereby superseded, and such vacated part designation shall be reserved for future assignment. The handling of milk in the merged marketing area, to be designated as the "New England Marketing Area" (Part 1001), shall be in conformity to and in compliance with the terms and conditions of the following attached order:

The provisions of the proposed marketing agreement and order amending and merging the aforesaid orders contained in the recommended decision issued by the Administrator on September 30, 1975, and published in the FEDERAL REGISTER on October 8, 1975 (40 FR 47316), shall be and are the terms and provisions of this order and are set forth in full herein, subject to the following modifications:

Changes are made in §§ 1001.5a (introductory text), 1001.5b (d) (1) and (2) and (e), 1001.11(c), 1001.12, and 1001.45 (e).

PART 1001—MILK IN THE NEW ENGLAND MARKETING AREA

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AUTHORITY: The provisions of this Part 1001 are issued under Sections 1–19, 48 Stat. 31, as amended: 7 U.S.C. 601–674.

GENERAL PROVISIONS

§ 1001.1 General provisions.

The terms, definitions, and provisions in Part 1000 of this chapter are hereby incorporated by reference and made a part of this order.

DEFINITIONS

§ 1001.2 New England marketing area.

"New England marketing area," hereinafter called the "marketing area," means all territory within the boundaries of the places set forth below, all waterfront facilities connected therewith and craft moored thereat, and all territory therein occupied by any governmental installation, institution, or other similar establishment:

CONNECTICUT

All of the State of Connecticut.

MASSACHUSETTS

Counties:
- Barnstable.
- Bristol.
- Dukes.
- Essex.
- Franklin (except the towns of New Salem, Orange, and Warwick).
- Hampden (except the towns of Brimfield, Monson, Palmer, and Wales).
- Hampshire (except the town of Ware).
- Middlesex.
- Norfolk.
- Plymouth.
- Suffolk.
- Worcester (except the towns of Athol, Barre, Douglas, East Brookfield, Hardwick, New Braintree, North Brookfield, Northbridge, Petersham, Phillipston, Royalston, Templeton, Uxbridge, Warren, West Brookfield, and Winchendon).

NEW HAMPSHIRE

Counties:
- Belknap.
- Cheshire.
- Grafton (the towns of Ashland, Bridgewater, Bristol, Holderness, and Plymouth only).
- Hillsborough.
- Merrimack.
- Rockingham.
- Strafford.
- Sullivan (except the town of Plainfield).

RHODE ISLAND

All cities and towns except New Shoreham (Block Island).

VERMONT

Counties:
- Bennington (the towns of Landgrove, Peru, and Winhall only).
- Windham (except Somerset).
- Windsor (the towns of Andover, Baltimore, Cavendish, Chester, Ludlow, Plymouth, Reading, Springfield, Weathersfield, Weston, West Windsor, and Windsor only).

§ 1001.3 Route disposition.

"Route disposition" means distribution of Class I milk by a handler to retail or wholesale outlets, which include vending machines but do not include plants or distribution points. The route disposition of a handler shall be attributed to the processing and packaging plant from which the Class I milk is moved to retail or wholesale outlets without intermediate movement to another processing and packaging plant.

§ 1001.4 Plant.

"Plant" means the land and buildings, together with their surroundings, facilities, and equipment, constituting a single operating unit or establishment that is operated by one or more persons engaged in the business of handling fluid milk

products for resale or manufacture into milk products and used for the handling or processing of milk or milk products. The term "plant" shall not include:

(a) Distribution points (separate premises used primarily for the transfer to vehicles of packaged fluid milk products moved there from processing and packaging plants); or

(b) Bulk reload points (separate premises used for the transfer of milk en route from dairy farmers' farms to a plant, at which premises facilities for washing and sanitizing cans or tank trucks are not maintained and used).

§ 1001.5 Pool plant.

"Pool plant" means any plant that meets the applicable conditions for pool plant status under §§ 1001.5a, 1001.5b, or 1001.5c. However, if the market administrator determines that a specified proportion or quantity of the receipts from dairy farmers and of pool milk from other sources handled at a plant is not available for Class I use because there is in force an unconditional contract for the plant to supply fluid milk products for Class II use, the plant shall not be a pool plant for the month in which the market administrator notifies the handler of the determination and for any subsequent month in which the contract is in force for any part of the month.

§ 1001.5a Distributing plant.

Each processing and packaging plant (other than a producer-handler's plant under any Federal order, a regulated plant under another Federal order, or an exempt distributing plant under § 1001.6 (b)) shall be a pool distributing plant in any month in which it meets the conditions specified in this section. Receipts and disposition of filled milk shall be excluded in determining whether a plant has met these conditions.

(a) Its total Class I disposition in the month, or in either of the 2 preceding months, is not less than 40 percent of its total receipts of fluid milk products in the corresponding month.

(b) Its route disposition in the marketing area in the month:

(1) Is not less than 10 percent of its total receipts of fluid milk products;

(2) Exceeds its route disposition in any other Federal marketing area; and

(3) Exceeds 700 quarts on any day or a daily average of 300 quarts.

§ 1001.5b Supply plant.

Each plant (other than a plant described in paragraph (e) of this section) shall be a pool supply plant in any month in which it meets the conditions specified in paragraph (a), and in paragraph (b), (c), or (d), of this section. Receipts and disposition of filled milk shall be excluded in determining whether a plant has met these conditions. For the purposes of this section, milk received at a plant from a cooperative association in its capacity as a handler under § 1001.9(d) shall be considered as having been received at that plant from dairy farmers' farms.

(a) It is a plant at which facilities are maintained and used for washing and sanitizing cans or tank trucks and to which milk is moved from dairy farmers' farms in cans and is there accepted, weighed or measured, sampled, and cooled, or to which milk is moved from dairy farmers' farms in tank trucks and is there transferred to stationary equipment or to other vehicles.

(b) It is a plant from which in the month of July at least 15 percent, and in any month of August through November at least 25 percent, of its total receipts of milk from dairy farmers' farms is shipped as fluid milk products, other than as diverted milk, to pool distributing plants.

(c) For any month of July through November, it is one of a group of plants that meets the conditions specified in this paragraph.

(1) The handler's written request for continuation of pool supply plant status, which the plant held under his operation in the preceding month, is received by the market administrator on or before the 16th day of the month.

(2) The group of plants, considered as a unit, meets the shipping requirements specified in paragraph (b) of this section.

(3) To qualify as a pool supply plant under this paragraph in November of any year, the plant, considered individually, shall have met the shipping requirements specified in paragraph (b) of this section in one of the months of July through October of that year.

(4) For the purposes of this paragraph, any supply plant operated by a cooperative association that is also a handler under § 1001.9(d) may be considered as one of a group of plants. In that event, the group's total receipts of milk from dairy farmers' farms shall be the total of such receipts by the association other than at any of its plants that is not one of the group, and the group's qualifying shipments shall consist of the qualifying shipments from the plants in the group plus the quantity of milk moved from farms of its members to pool distributing plants by the association in its capacity as a handler under § 1001.9(d).

(d) For any month of December through June, it is a plant from which at least 15 percent of its total receipts of milk from dairy farmers' farms is shipped as fluid milk products, other than as diverted milk, to pool distributing plants, or it is a plant that meets the requirements for automatic pool plant status specified in this paragraph. The automatic pool plant status of a plant shall be revoked for any month for which the market administrator has received the handler's written request for revocation on or before the 16th day of that month. In that event, the plant shall not have automatic pool plant status in any subsequent month of the current December through June period.

(1) The plant was a pool supply plant under this order or the Boston Regional or Connecticut orders in each of the preceding months of July through November; or

(2) The plant was a pool supply plant under this order or the Boston Regional or Connecticut orders in at least two of the preceding months of July through November and would have been such a plant in all other months in that period had it not been a pool plant under the New York-New Jersey Federal order.

(e) No plant shall be a pool supply plant in any month in which it is operated as:

(1) A pool distributing plant;

(2) An exempt distributing plant under § 1001.6(b);

(3) The plant of a producer-handler under any Federal order;

(4) A regulated plant under another Federal order if its Class I disposition of fluid milk products, except filled milk, in the marketing area regulated by that order exceeds its shipments of fluid milk products, except filled milk, to pool distributing plants under this order; or

(5) A plant designated as a regular pool plant under the New York-New Jersey Federal order.

§ 1001.5c Cooperative association plant located in the marketing area.

Each plant, other than a plant operated as a pool distributing plant or a pool supply plant, that is located in the marketing area and operated by a cooperative association shall be a pool plant in any month in which its route disposition does not exceed 2 percent of its total receipts of fluid milk products. Receipts and disposition of filled milk shall be excluded in determining whether a plant has met these conditions.

§ 1001.6 Exempt distributing plant.

"Exempt distributing plant" means:

(a) A plant, other than a pool supply plant or a regulated plant under another Federal order, that meets all the requirements for status as a pool distributing plant except that its route disposition (exclusive of filled milk) in the marketing area in the month does not exceed 700 quarts on any day or a daily average of 300 quarts.

(b) A plant that is operated by a governmental agency and from which there is route disposition in the marketing area.

§ 1001.7 Distributing plant for unregulated markets.

"Distributing plant for unregulated markets" means a processing and packaging plant from which the route disposition outside any Federal marketing area amounts to more than 50 percent of its total receipts of fluid milk products during the month. The term shall not apply to a pool plant, an exempt distributing plant, a producer-handler's plant under any Federal order, or a regulated plant under another Federal order.

§ 1001.8 Regulated plant under another Federal order.

"Regulated plant under another Federal order" means a pool plant under another Federal order or any other plant at which all fluid milk products handled become subject to the classification and pricing provisions of another Federal order.

§ 1001.9 Handler.

"Handler" means:

(a) Any person who operates a pool plant;

(b) Any person who operates any other plant, or a pool bulk tank unit as defined under another Federal order, from which fluid milk products are disposed of, directly or indirectly, in the marketing area;

(c) Any person who does not operate a plant but who engages in the business of receiving fluid milk products for resale and distributes to retail or wholesale outlets packaged fluid milk products received from any plant described in paragraph (a) or (b) of this section; or

(d) Any cooperative association with respect to the milk that is moved from farms in tank trucks operated by, or under contract to, the association to pool plants or as diverted milk to nonpool plants, other than a producer-handler's plant, for the account of, and at the direction of, the association. The association shall be considered as the handler who received the milk from the dairy farmers. However, the cooperative association shall not be the handler with respect to the milk moved from any farm if the association and the operator of the pool plant to which milk from such farm is moved both submit a request in writing, on or before the due date for filing the monthly reports of receipts and utilization, that the operator of the pool plant be considered as the handler who received the milk from the dairy farmer, and the pool plant operator's request states that he is purchasing the milk from such farm on the basis of the farm bulk tank measurement readings and the butterfat tests of samples of the milk taken from the farm bulk tank.

§ 1001.10 Producer-handler.

"Producer-handler" means any person who, during the month, is both a dairy farmer and a handler and who meets the conditions specified in each of the paragraphs of this section.

(a) He provides as his own enterprise and at his own risk the maintenance, care, and management of the dairy herd and other resources and facilities that he uses to produce milk, to process and package such milk at his own plant, and to distribute it as route disposition.

(b) His own route disposition constitutes the majority of the route disposition from his plant.

(c) The quantity of route disposition in the marketing area from his plant is greater than in any other Federal marketing area.

(d) He receives no fluid milk products except from his own production and pool plants. If his receipts from own production and the total route disposition from his plant each exceed 4,300 pounds per day for the month, his receipts from pool plants are not in excess of 2 percent of his receipts from own production. For the purposes of this paragraph, his receipts of fluid milk products shall include receipts from plants of other persons at all retail and wholesale outlets that are located in a Federal marketing area and operated by him, an affiliate, or any person who controls or is controlled by him.

§ 1001.11 Dairy farmer for other markets.

"Dairy farmer for other markets" means any dairy farmer described in this section. For the purposes of this section, the acts of any person who is an affiliate of, or who controls or is controlled by, a handler or dealer shall be considered as having been performed by the handler or dealer. Receipts from a "dairy farmer for other markets" under paragraphs (a), (b), and (c) of this section shall be considered as receipts from the unregulated plant at which the greatest quantity of his milk was received in the most recent month.

(a) The term includes a dairy farmer with respect to milk that is purchased from him during the month by a dealer who operates a plant but does not operate a pool plant, if the milk is moved to a pool plant directly from the dairy farmer's farm. The term shall not apply to the dairy farmer, however, if all the nonpool milk purchased from him during the month by the same dealer is a receipt of producer milk under the provisions of another Federal order or will be such if the dairy farmer is a producer under this order.

(b) The term includes a dairy farmer with respect to milk that is purchased from him by a handler and moved to a pool plant or that is purchased from him by a cooperative association in its capacity as a handler under § 1001.9(d), if that handler caused milk from the same farm to be moved as nonpool milk to any plant during the same month. The term shall not apply to the dairy farmer, however, if all the nonpool milk is a receipt of producer milk under the provisions of another Federal order or will be such if the dairy farmer is a producer under this order or if all the nonpool milk is excluded from producer milk under § 1001.15.

(c) The term includes a dairy farmer with respect to milk that is received from him by a handler at a pool plant or that is purchased from him by a cooperative association in its capacity as a handler under § 1001.9(d) during any of the months of December through June, under this order or the Boston Regional or Connecticut orders the handler caused nonpool milk from the same farm to be received during any of the preceding months of July through November at a plant that is not a pool plant under any Federal order in the current month. The term shall not apply to the dairy farmer, however, if all the nonpool milk was a receipt of producer milk under the provisions of another Federal order or represented receipts from own production by a producer-handler under any Federal order, or was excluded from producer milk under § 1001.15 or comparable provisions under the Boston Regional or Connecticut orders.

(d) Notwithstanding the provisions of paragraphs (a), (b), and (c) of this section, the term shall apply to any dairy farmer with respect to milk moved from his farm to a handler's pool plant or purchased from him by a cooperative association in its capacity as a handler under § 1001.9(d) during any month in which milk from that farm was received as base milk under another Federal order.

§ 1001.12 Producer.

"Producer" means a dairy farmer who produces milk that is moved, other than in packaged form, from his farm to a pool plant, or to any other plant as diverted milk. However, the term shall not include:

(a) A producer-handler under any Federal order;

(b) A dairy farmer with respect to milk caused to be moved from his farm to a pool plant under this order by a handler under another Federal order if all of the dairy farmer's milk so received is considered as a receipt from a producer under the provisions of the other Federal order;

(c) A dairy farmer for other markets;

(d) A dairy farmer who is a local or state government that has nonproducer status for the month under § 1001.16(c);

(e) A dairy farmer who is a governmental agency that is operating an exempt distributing plant under § 1001.6 (b);

(f) A dairy farmer with respect to salvage product assigned under § 1001.45 (e);

(g) A dairy farmer with respect to milk that is excluded from producer milk under § 1001.15; or

(h) A dairy farmer with respect to milk that a handler causes to be moved from the dairy farmer's farm to a regulated plant under another Federal order if any portion of such dairy farmer's milk so moved is assigned to Class I milk under the provisions of such other order and all of the dairy farmer's milk so moved is considered as producer milk under the other order.

§ 1001.13 Producer milk.

"Producer milk" means milk that the handler has received from producers. The quantity of milk received by a handler from producers shall include any milk of a producer that was not received at any plant but which the handler or an agent of the handler has accepted, measured, sampled, and transferred from the producer's farm tank into a tank truck during the month. Such milk shall be considered as having been received at the pool plant at which other milk from the same farm of that producer is received by the handler during the month, except that in the case of a cooperative association in its capacity as a handler under § 1001.9(d), the milk shall be considered as having been received at a plant in the zone location of the pool plant, or pool plants within the same zone, to which the greatest aggregate quantity of the milk of the cooperative association in such capacity was moved during the current month or the most recent month.

§ 1001.14 Pool milk.

"Pool milk" means fluid milk products (other than exempt milk) received or disposed of as specified in this section, except that with respect to filled milk the term shall include only the quantity proved to have been made from other fresh fluid milk products.

(a) Receipts of producer milk;

(b) The following receipts of fluid milk products at pool plants (exclusive of receipts from other pool plants, producer-handlers under any Federal order, exempt distributing plants, and receipts from regulated plants and pool bulk tank units under other Federal orders that are classified and priced under the other orders):

(1) Receipts at pool distributing plants from plants located outside the New England States and beyond zone 40;

(2) Receipts at pool plants, other than pool distributing plants, to the extent assigned to Class I milk under § 1001.45 (g), from plants located outside the New England States and beyond zone 40; and

(3) Receipts at pool plants, to the extent assigned to Class I milk under § 1001.45(h), from plants located within one of the New England States or in zone 40 or a nearer zone, exclusive of bulk fluid milk products from distributing plants for unregulated markets; and

(c) Route disposition in the marketing area from any processing and packaging plant (except a pool plant, a producer-handler's plant under any Federal order, an exempt distributing plant, or a regulated plant under another Federal order). In determining the quantity of pool milk under this paragraph, the total quantity of route disposition in the marketing area from the plant first shall be reduced by the quantity of fluid milk products received at the plant during the month that is classified and priced as Class I milk or the equivalent thereof under any marketwide pool Federal order and that is not used to offset route disposition in any other Federal marketing area.

§ 1001.15 Diverted milk.

"Diverted milk" means milk, other than that excluded under § 1001.12 from being considered as received from a producer, that meets the conditions set forth in paragraph (a) or (b) of this section and is not excluded from diverted milk under paragraph (c) of this section. For purposes of this section, the terms "producer milk" and "pool plant" shall include any milk or any plant that met the "producer milk" or "pool plant" definitions of the Boston Regional and Connecticut orders at the applicable time.

(a) Milk that a handler in his capacity as the operator of a pool plant reports as having been moved from a dairy farmer's farm to the pool plant, but which he caused to be moved from the farm to another plant that is not a plant of a producer-handler, if the handler specifically reports such movement to the other plant as a movement of diverted milk, and the conditions of paragraph (a) (1) or (2) of this section have been met. Milk that is diverted milk under this paragraph shall be considered to have been received at the pool plant from which it was diverted, but for pricing purposes the location adjustments for the zone location specified in § 1001.53 shall be used.

(1) During any 2 months subsequent to July of the preceding calendar year, or during the current month, on more than half of the days on which the handler caused milk to be moved from the dairy farmer's farm during the month, all of the milk that the handler caused to be moved from that farm was physically received as producer milk at the handler's pool plant or at another of the handler's pool plants that is no longer operated as a plant.

(2) During the current month and not more than 5 other months subsequent to July of the preceding calendar year, milk from the dairy farmer's farm was received at or diverted from the handler's pool plant as producer milk, and during the current month all of the milk from that farm that the handler reported as diverted milk was moved from the farm in a tank truck in which it was intermingled with milk from other farms, the milk from a majority of which farms was diverted from the same pool plant in accordance with the preceding provisions of this paragraph.

(b) Milk that a cooperative association in its capacity as a handler under § 1001.9(d) caused to be moved from a dairy farmer's farm to a nonpool plant that is not a plant of a producer-handler if the association specifically reports the movement to such plant as a movement of diverted milk, and the conditions of paragraph (b) (1) or (2) of this section have been met. Milk that is diverted under this paragraph shall be considered to have been received by the cooperative association in its capacity as a handler under § 1001.9(d), but for pricing purposes the location adjustments for the zone location specified in § 1001.53 shall be used.

(1) During any 2 months subsequent to July of the preceding calendar year, or during the current month, on more than half of the days on which the cooperative association in its capacity as a handler under § 1001.9(d) caused milk to be moved from the farm as producer milk during the month, all of the milk that the association caused to be moved from the farm was physically received at a pool plant.

(2) During the current month and not more than 5 other months subsequent to July of the preceding calendar year, the cooperative association in its capacity as a handler under § 1001.9(d) caused milk to be moved from the dairy farmer's farm as producer milk, and during the current month all of the milk from that farm that the cooperative association in its capacity as a handler under § 1001.9(d) reported as diverted milk was moved from the farm in a tank truck in which it was intermingled with milk from other farms, the milk from a majority of which farms was diverted by the association in accordance with the preceding provisions of this paragraph.

(c) Milk moved, as described in paragraphs (a) and (b) of this section, from dairy farmers' farms to nonpool plants in excess of 25 percent of the total quantity of producer milk received (including diversions) by the handler during the month shall not be diverted milk. Such milk, and any other milk reported as diverted milk that fails to meet the requirements set forth in this section, shall be considered as having been moved directly from the dairy farmers' farms to the plant of physical receipt, and if that plant is a nonpool plant the milk shall be excluded from producer milk. If the handler fails to designate the dairy farmers whose milk is to be so excluded, the entire quantity of milk that the handler caused to be moved from dairy farmers' farms directly to nonpool plants during the month shall be excluded from producer milk.

§ 1001.16 Exempt milk.

"Exempt milk" means:

(a) Fluid milk products received at a pool plant in bulk from a nonpool plant to be processed and packaged, for which an equivalent quantity of packaged fluid milk products is returned to the operator of the nonpool plant during the same month, if the receipt of bulk fluid milk products and return of packaged fluid milk products occur during an interval in which the facilities of the nonpool plant at which the fluid milk products are usually processed and packaged are temporarily unusable because of fire, flood, storm, or similar extraordinary circumstances completely beyond the dealer's control;

(b) Packaged fluid milk products received at a pool plant from a nonpool plant in return for an equivalent quantity of bulk fluid milk products moved from a pool plant for processing and packaging during the same month, if the movement of bulk fluid milk products and receipt of packaged fluid milk products occur during an interval in which the facilities of the pool plant at which the fluid milk products are usually processed and packaged are temporarily unusable because of fire, flood, storm, or similar extraordinary circumstances completely beyond the handler's control; and

(c) Milk received at a pool plant in bulk from the dairy farmer who produced it, to the extent of the quantity of any packaged fluid milk products returned to the dairy farmer, if:

(1) The dairy farmer is a State or local government that is not engaged in the route disposition of any of the returned products; and

(2) The dairy farmer has, by written notice to the market administrator and the receiving handler, elected nonproducer status for a period of not less than 12 months beginning with the month in which the election was made and continuing for each subsequent month until canceled in writing, and the election is in effect for the current month.

§ 1001.17 Fluid milk product.

"Fluid milk product" means milk, skimmed milk, flavored milk or skimmed milk, cultured skimmed milk, butter-

milk, filled milk, concentrated milk, and any mixture of milk or skimmed milk and cream containing less than 10 percent butterfat. The term includes these products in fluid, frozen, fortified, or reconstituted form but does not include sterilized products in hermetically sealed containers and such products as eggnog, yogurt, whey, ice cream mix, ice milk mix, milk shake base mix, evaporated or condensed milk or skimmed milk (in either plain or sweetened form), and any product that contains 6 percent or more nonmilk fat (or oil). Fluid milk products that have been placed in containers for disposition to retail or wholesale outlets are referred to in this order as packaged fluid milk products.

§ 1001.18 Cream.

"Cream," for purposes of this order, means that portion of milk, containing not less than 10 percent butterfat, that rises to the surface of milk on standing, or is separated from it by centrifugal force. The term also includes soured cream, frozen cream, fortified cream, reconstituted cream, and any mixture of milk or skimmed milk and cream containing 10 percent or more of butterfat.

§ 1001.19 Filled milk.

"Filled milk" means any combination of nonmilk fat (or oil) with skimmed milk (whether fresh, cultured, reconstituted or modified by the addition of nonfat milk solids), with or without milkfat, so that the product (including stabilizers, emulsifiers or flavoring) resembles milk or any other fluid milk product, and contains less than 6 percent nonmilk fat (or oil).

§ 1001.20 Cooperative association.

"Cooperative association" means any cooperative marketing association of producers which the Secretary determines:

(a) To be qualified under the provisions of the Act of Congress of February 18, 1922, known as the "Capper-Volstead Act";

(b) To have full authority in the sale of milk of its members; and

(c) To be engaged in making collective sales of, or marketing, milk or its products for its members.

REPORTS

§ 1001.30 Monthly reports of receipts and utilization.

On or before the 8th day after the end of the month, or not later than the 10th day if the report is delivered in person to the office of the market administrator, each handler with respect to each of his pool plants or any other plant (except an exempt distributing plant under § 1001.6(b)) from which there is route disposition in the marketing area, and each cooperative association in its capacity as a handler under § 1001.9(d), shall file a report for the month with the market administrator. Such report shall be in the detail and on forms prescribed by the market administrator and shall show the quantities of skim milk and butterfat contained in:

(a) Receipts of milk and milk products in the form of:

(1) Producer milk (including the specific quantities of diverted milk and receipts from the handler's own production);

(2) Pool milk other than producer milk;

(3) Fluid milk products and cream from all other plants;

(4) Milk from cooperative associations in their capacity as handlers under § 1001.9(d); and

(5) Fluid milk products and cream from all other sources (including the quantities of fluid milk products or cream reconstituted from other milk products and the quantities of other milk products used to fortify fluid milk products or cream);

(b) Inventories of fluid milk products and cream at the beginning and at the end of the month;

(c) The respective quantities of fluid milk products and cream sold, distributed, used, or otherwise disposed of, and classified in accordance with the provisions of §§ 1001.40 through 1001.42; and

(d) Bulk milk received at a handler's pool plant from a cooperative association in its capacity as the operator of a pool plant or as a handler under § 1001.9 (d), if such milk was rejected by the handler subsequent to his receipt of the milk on the basis that it was not of marketable quality at the time the milk was delivered to the handler's plant, and such milk was removed from the plant in bulk form by the cooperative association and was replaced with other milk from the association. Except for purposes of this paragraph and § 1001.31(c), such milk that was so removed from the handler's plant shall be treated for all other purposes of the order as though it had not been delivered to and received at the handler's plant.

§ 1001.31 Other reports of receipts and utilization.

(a) Each handler who is not required to file monthly reports of receipts and utilization under § 1001.30 shall file with the market administrator reports relating to his receipts and utilization of milk and milk products at the time and in the manner prescribed by the market administrator.

(b) Each handler who dumps fluid milk products at a pool plant shall:

(1) Give the market administrator, at his request and in accordance with instructions by him, advance notice of the handler's intention to dump such products and the quantities involved; and

(2) Submit to the market administrator at the time and in the manner prescribed by him such detailed reports of dumpage as the market administrator requests.

(c) Each handler who intends to have a receipt of unmarketable milk replaced with other milk in the manner described under § 1001.30(d) shall give the market administrator, at his request and in accordance with instructions by him, advance notice of the handler's intention to have such milk replaced.

§ 1001.32 Reports regarding individual producers and dairy farmers.

(a) Each handler shall report on or before the 15th day after the end of each month the information required by the market administrator with respect to producer additions, producer withdrawals, changes in farm locations, and changes in the name of farm operators.

(b) Each handler that is not a cooperative association, upon request from any such association, shall furnish it with information with respect to each of its producer members from whose farm the handler begins, resumes, or stops receiving milk at his pool plant. Such information shall include the applicable date, the producer-member's post office address and farm location, and, if known, the plant at which his milk was previously received, or the reason for the handler's failure to continue receiving milk from his farm. In lieu of providing the information directly to the association, the handler may authorize the market administrator to furnish the association with such information, derived from the handler's reports and records.

(c) Each handler shall submit to the market administrator, within 10 days after his request made not earlier than 20 days after the end of the month, his producer payroll for the month, which shall show for each producer:

(1) The daily and total pounds of milk delivered and its average butterfat test; and

(2) The net amount of the handler's payments to the producer, with the prices, deductions, and charges involved.

§ 1001.33 Notices to producers.

Each handler shall furnish each producer from whom he receives milk the following information regarding the weight and butterfat test of the milk:

(a) Whenever he receives milk from the producer on the basis of farm bulk tank measurements, the handler shall give the producer at the time the milk is picked up at the farm a receipt indicating the measurement and the equivalent pounds of milk received;

(b) Whenever he receives milk from the producer on a basis other than farm bulk tank measurements, the handler shall give the producer within 3 days after receipt of the milk a written notice of the quantity so received;

(c) If butterfat tests of the producer's milk are determined from fresh milk samples, the handler shall give the producer within 10 days after the end of each month a written notice of the producer's average butterfat test for the month. Such notice shall not be required if the handler has given the producer a written notice of the butterfat test for each of the sampling periods within the month; and

(d) If butterfat tests of the producer's milk are determined from composite milk samples, the handler shall give the

producer within 7 days after the end of each sampling period a written notice of the producer's average butterfat test for the period.

CLASSIFICATION OF MILK

§ 1001.40 Classes of utilization.

Except as provided in §§ 1001.41 and 1001.42, all skim milk and butterfat required to be reported by a handler under § 1001.30 shall be classified as follows:

(a) *Class I milk.* Class I milk shall be all skim milk and butterfat (including that used to produce concentrated milk):

(1) Disposed of in the form of a fluid milk product, except as otherwise provided in paragraph (b) of this section; and

(2) Not established as Class II milk.

(b) *Class II milk.* Class II milk shall be all skim milk and butterfat for which the handler who first receives the skim milk and butterfat proves that such were:

(1) Disposed of, or in inventory at the end of the month, in the form of cream;

(2) Used to produce milk products other than fluid milk products or cream;

(3) Disposed of in bulk fluid milk products to manufacturing establishments such as bakeries, candy factories, soup factories, and similar establishments at which the fluid milk products were used in the manufacture of food products other than milk products;

(4) In fluid milk products in inventory at the end of the month to the extent not classified as Class I milk under § 1001.41;

(5) Disposed of in fluid milk products for livestock feed;

(6) In fluid milk products dumped or discarded, if the conditions imposed under § 1001.31(b) have been met;

(7) In fluid milk products destroyed or lost under extraordinary circumstances; and

(8) In shrinkage not in excess of 2 percent of the respective quantities of skim milk and butterfat in receipts of fluid milk products and cream, exclusive of diverted milk and inventory at the beginning of the month. The shrinkage on the milk of a cooperative association in its capacity as a handler under § 1001.9(d) that is received at a pool plant shall be classified as Class II milk up to the entire 2 percent maximum rate if the operator of the pool plant notifies the market administrator in writing, on or before the date on which its receipt is required to be reported under § 1001.30, that he has agreed to purchase the milk on the basis of farm bulk tank measurement readings and of the butterfat tests of samples of the milk taken from the farm bulk tank. Otherwise, the shrinkage on such receipts at a pool plant shall be classified as Class II milk only up to 1.5 percent thereof and shrinkage of up to 0.5 percent on the milk so moved shall be classified as Class II milk to the cooperative association in its capacity as a handler under § 1001.9(d).

§ 1001.41 Classification of inventories.

Inventories of fluid milk products at the end of each month shall be classified as Class I milk pending final disposition of the fluid milk products, if the handler requests such classification and does not receive milk from producers or cooperative associations in their capacity as handlers under § 1001.9(d) or does not claim a Class II classification of any fluid milk products received.

§ 1001.42 Classification of fluid milk products moved to plants.

Fluid milk products moved from a pool plant to any other plant, or by a cooperative association in its capacity as a handler under § 1001.9(d) to any plant, shall be classified as follows:

(a) As Class I milk if transferred in packaged form to any other plant;

(b) As Class I milk if transferred from a pool plant to the plant of a producer-handler under any Federal order;

(c) As Class I milk if moved from a pool plant to an exempt distributing plant under § 1001.6(b);

(d) In the class to which assigned under § 1001.47 if moved in bulk form to any pool plant;

(e) In the class to which assigned under the other order if moved in bulk form to a regulated plant under another Federal order;

(f) As Class I milk, to the extent of the total quantity of the same form of fluid milk products so moved that is utilized as Class I milk at the plant to which moved, if moved in bulk form to any plant other than a plant to which movements of bulk fluid milk products are subject to classification under the preceding paragraphs of this section, and as Class II milk to the extent of any remainder; and

(g) As Class I milk if moved in bulk form to any plant other than a pool plant or a regulated plant under another Federal order and thence to another plant, not regulated under a Federal order, located outside the New England States and New York State.

§ 1001.43 Assignment of receipts to classes in general.

(a) The total quantities of skim milk and butterfat received during the month at each pool plant and by each cooperative association in its capacity as a handler under § 1001.9(d) (including those quantities in inventory at the beginning of the month) shall be assigned separately, in the manner and sequence provided in §§ 1001.44 through 1001.47, to the respective quantities of skim milk and butterfat classified as Class I milk and Class II milk under §§ 1001.40 through 1001.42.

(b) Except as provided in § 1001.46, whenever receipts have been assigned under §§ 1001.44 through 1001.47 to the remaining pounds in a class, all remaining receipts shall be assigned to the other class.

(c) If receipts from more than one plant are to be assigned under a paragraph in § 1001.45 or § 1001.47, the receipts shall be assigned in sequence according to the zone locations of the plants, beginning with the plant in the nearest zone to Boston for assignments to Class I milk and beginning with the plant in the most distant zone from Boston for assignments to Class II milk.

§ 1001.44 Initial assignments to Class I milk.

(a) Assign to Class I milk the receipts of exempt milk.

(b) Assign to Class I milk the receipts of packaged fluid milk products from regulated plants under other Federal orders, if the fluid milk products are classified and priced under the other orders as Class I milk or the equivalent thereof or in accordance with their assignment under this order.

(c) Assign to Class I milk the receipts of packaged fluid milk products from other pool plants.

(d) Assign to Class I milk the fluid milk products in inventory at the beginning of the month that were classified as Class I milk in the preceding month.

§ 1001.45 Initial assignments to Class II milk.

(a) Assign to Class II milk the quantities of fluid milk products or cream reconstituted from other milk products and the quantities of other milk products used to fortify fluid milk products or cream. If the quantity of any reconstituted product is not known, the quantity assigned shall be the quantity of butterfat used in the reconstitution and the quantity of skim milk required to produce the milk products so used. Any unaccounted-for plain condensed milk or skimmed milk, dry whole milk, or nonfat dry milk shall be considered to have been used in the reconstitution of fluid milk products.

(b) Assign to Class II milk the quantities of cream in inventory at the beginning of the month and received during the month.

(c) Assign to Class II milk the receipts of fluid milk products (other than exempt milk) from a local or State government that has elected nonproducer status for the month under § 1001.16(c) and receipts from dairy farmers for other markets under § 1001.11(d).

(d) Assign to Class II milk the fluid milk products in inventory at the beginning of the month that were not assigned under § 1001.44(d).

(e) Assign to Class II milk the receipts of fluid milk products from producer-handlers under any Federal order, from farms of a governmental agency that is operating an exempt distributing plant under § 1001.6(b), and from exempt distributing plants; and receipts from dairy farmers which are rejected and segregated in the handler's normal operation for receiving milk, and which receipts are accepted and disposed of by the handler as salvage product rather than as milk.

(f) Assign to Class II milk the receipts of bulk fluid milk products from distributing plants for unregulated markets located within one of the New England States or in zone 40 or a nearer zone.

(g) At pool plants other than pool distributing plants, assign to Class II milk the receipts of fluid milk products from plants located outside the New England States and beyond zone 40, if the fluid

milk products are not classified and priced under any Federal order.

(h) Assign to Class II milk the receipts of fluid milk products from plants located within one of the New England States or in zone 40 or a nearer zone, except receipts assigned under paragraph (f) of this section and receipts that are classified and priced under any Federal order.

§ 1001.46 Special assignments at pool distributing plants.

(a) At pool distributing plants, assign to Class II milk, to the extent of the remaining pounds in that class, the receipts of bulk fluid milk products from each regulated plant or handler under another Federal order, if both the shipper and the operator of the receiving plant have requested such Class II classification and assignment.

(b) At pool distributing plants, assign in the manner provided in paragraph (b) (1) and (2) of this section any remaining receipts of bulk fluid milk products from each regulated plant or handler under another Federal order, if such receipts are classified and priced under the other order as Class I milk or the equivalent thereof or in accordance with their assignment under this order.

(1) Assign such receipts to Class I milk and Class II milk in proportion to the estimated percentages of skim milk and butterfat, respectively, in each class in producer milk of all handlers for the month as announced under § 1001.48, or in proportion to the remaining pounds of skim milk and butterfat, respectively, in each class at all of the handler's pool plants, whichever procedure results in the greater quantity of skim milk and butterfat combined in such receipts being assigned to Class II milk.

(2) The quantity assigned to Class II milk under this paragraph shall not exceed the quantity of Class II milk remaining at all of the handler's pool plants. Any remaining receipts shall be assigned to Class I milk.

(c) If the quantity to be assigned to a class under paragraph (b) of this section exceeds the quantity remaining in that class at the pool distributing plant, the remaining quantity shall be increased to the quantity to be assigned to that class and the remaining quantity in that class at the handler's other pool plants shall be decreased to the same extent, in sequence beginning with the plant in the zone nearest to Boston. The quantity remaining in the other class thereupon shall be decreased correspondingly at the pool distributing plant and shall be increased correspondingly at the other pool plants involved in the adjustment.

(d) The quantities assigned under this section shall be limited to the excess of the receipts from a plant over the quantities of bulk fluid milk products moved to that plant from the pool distributing plant.

§ 1001.47 Additional assignments to Class I and Class II milk.

(a) At pool distributing plants that have received bulk fluid milk products from pool plants located outside the nearby plant zone, assign to Class II milk a quantity of receipts from producers and cooperative associations in their capacity as handlers under § 1001.9 (d) equal to 6 percent of the plant's Class I route disposition or the remaining Class II milk at the plant, whichever is less.

(b) Assign to Class I milk the receipts of milk from producers and cooperative associations in their capacity as handlers under § 1001.9(d) that have not been previously assigned.

(c) Assign to Class I milk the receipts of bulk fluid milk products from other pool plants.

(d) At pool distributing plants, assign to Class I milk the receipts from plants located outside the New England States and beyond zone 40 of pool milk other than producer milk, if the fluid milk products received are not classified and priced under any Federal order.

(e) At pool plants other than pool distributing plants, assign to Class I milk the receipts of bulk fluid milk products from each regulated plant or handler under another Federal order, if such receipts are classified and priced under the other order as Class I milk or the equivalent thereof or in accordance with their assignment under this order.

(f) Assign to Class II milk any receipts of fluid milk products not previously assigned.

§ 1001.48 Market administrator's report concerning classification.

Whenever required for the purpose of assigning receipts from a regulated plant or handler under another Federal order under § 1001.46(b), the market administrator shall publicly announce his estimate of the utilization (to the nearest whole percentage) in each class during the month of skim milk and butterfat, respectively, in producer milk of all handlers. Such estimate shall be based upon the most current available data and shall be final for such purpose.

CLASS PRICES

§ 1001.50 Class prices.

The class prices per hundredweight of milk for the month at plants located in zone 21 shall be as follows:

(a) *Class I price.* The Class I price shall be the basic formula price for the second preceding month plus $2.58.

(b) *Class II price.* Subject to the adjustment set forth below for the applicable month, the Class II price shall be the basic formula price for the month.

Month:	*Amount*
January	+$0.03
February	+.02
March	−.05
April	−.09
May	−.12
June	−.11
July	+.03
August	+.10
September	+.06
October	+.06
November	+.06
December	+.06

§ 1001.51 Basic formula price.

The "basic formula price" shall be the average price per hundredweight for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the month, adjusted to a 3.5 percent butterfat basis and rounded to the nearest cent. For such adjustment, the butterfat differential (rounded to the nearest one-tenth cent) per one-tenth percent butterfat shall be 0.12 times the simple average of the wholesale selling prices (using the midpoint of any price range as one price) of Grade A (92-score) bulk butter per pound at Chicago, as reported by the Department for the month. For the purpose of computing the Class I price, the resulting price shall be not less than $4.33.

§ 1001.52 Plant location adjustments.

The class prices and blended prices computed under §§ 1001.50 and 1001.61 shall be subject to plant location adjustments based upon the zone locations of plants. The zone location of any plant and the location adjustments applicable to each zone location shall be determined as specified in this section.

(a) Each plant that is located in the States of Connecticut, Massachusetts (except Berkshire County), or Rhode Island shall be in the "nearby plant" zone.

(b) The zone location of each plant that is outside the "nearby plant" zone shall be based upon its highway mileage distance to Boston, Massachusetts, as determined by use of Mileage Guide No. 10, and supplements to and revisions thereof, issued by Household Goods Carriers' Bureau, Agent, Arlington, Virginia. The mileages used shall be those shown between designated key points in the mileage charts, and between named points on the appropriate state road maps, as published in the mileage guide. In any instance in which the map does not clearly show the mileage between points on a road, the mileage used shall be the mileage as determined by the highway authority for the state in which the road is located.

(c) The distance for each plant shall be the mileage between Boston and the named point nearest to the plant, as shown in the mileage charts. If that named point is not listed in the mileage charts, the distance for the plant shall be the lowest mileage distance between Boston and that named point, computed as follows:

(1) Determine from the charts the mileage between Boston and each of the three key points nearest to the named point which are nearer to Boston than the named point; and

(2) For each of these key points, add to the result in paragraph (c) (1) of this section the mileage between the key point and the named point, measured to the greatest extent possible over roads designated as principal roads.

(d) Notwithstanding the provisions of paragraphs (b) and (c) of this section, for any named point located in New England and New York State, determine the highway mileage distance between Boston and the named point by use of the appropriate state maps contained in Mileage Guide No. 7, issued by Household Goods Carriers' Bureau, Agent, Ar-

lington, Virginia. Such distance shall be the lowest highway mileage between Boston and the named point on the map, over roads designated thereon as paved, all-weather roads. In the event that the named point is not located on a through, paved, all-weather road, such other roads shall be used to reach a through, paved, all-weather road as will result in the lowest highway mileage to Boston, except that such other roads shall not be used for a distance of more than 15 miles if it is otherwise possible to connect with a through, paved, all-weather road. In any instance in which the map does not clearly show the mileage between points on a road, the mileage used shall be the mileage as determined by the highway authority for the state in which the road is located. The mileage so determined, or the mileage determined under paragraphs (b) and (c) of this section, whichever is less, shall be considered to be the lowest highway mileage distance between Boston and the named point.

(e) The location adjustments for each plant shall be the amounts shown in the following table for the zone in which the plant is located:

Location adjustments for determination of zone price

Distance to Boston (miles)	Plant location zone	Class I and blended price adjustments (cents per hundredweight)	Class II price adjustments (cents per hundredweight)
Various	Nearby plant.	+40.0	+5.8
31 to 40	4	+36.4	+4.5
41 to 50	5	+35.2	+4.2
51 to 60	6	+34.0	+4.0
61 to 70	7	+32.8	+3.7
71 to 80	8	+31.6	+3.5
81 to 90	9	+30.4	+3.2
91 to 100	10	+29.2	+3.0
101 to 110	11	+28.0	+2.8
111 to 120	12	+26.8	+2.6
121 to 130	13	+25.6	+2.4
131 to 140	14	+24.4	+2.1
141 to 150	15	+7.2	+1.6
151 to 160	16	+6.0	+1.3
161 to 170	17	+4.8	+1.2
171 to 180	18	+3.6	+.6
181 to 190	19	+2.4	+.4
191 to 200	20	+1.2	+.1
201 to 210	21	0	0
211 to 220	22	−1.0	−.6
221 to 230	23	−2.0	−.7
231 to 240	24	−3.0	−.9
241 to 250	25	−4.0	−.9
251 to 260	26	−5.0	−1.2
261 to 270	27	−6.0	−1.3
271 to 280	28	−7.0	−1.5
281 to 290	29	−8.0	−1.6
291 to 300	30	−9.0	−1.8
301 to 310	31	−10.0	−2.3
311 to 320	32	−11.0	−2.4
321 to 330	33	−12.0	−2.5
331 to 340	34	−13.0	−2.8
341 to 350	35	−14.0	−2.8
351 to 360	36	−15.0	−3.0
361 to 370	37	−16.0	−3.1
371 to 380	38	−17.0	−3.3
381 to 390	39	−18.0	−3.4
391 to 400	40	−19.0	−3.5
401 and over	41 and over	(1)	−3.5

[1] Class I and blended price location adjustments applicable to plants located more than 400 miles from Boston shall be obtained by extending the table at the rate of 1 cent for each additional 10 miles except that in no event shall the Class I or blended price at any zone be less than the Class II price for the month for plants in the same zone.

§ 1001.53 Determination of applicable zone locations for pricing purposes.

In computing the value of fluid milk products at class prices under § 1001.60, the handlers' producer-settlement fund debits and credits under § 1001.71, the minimum amounts payable to producers under § 1001.73, and the minimum amounts payable to cooperative associations under § 1001.74, the location adjustments specified in § 1001.52 for the zone location of the plant for which the computation is being made shall be used except that for the following items the adjustments for the zone locations specified shall be used:

(a) For producer milk diverted by any handler, including a cooperative association in its capacity as a handler under § 1001.9(d), the zone location of the plant to which the milk was diverted;

(b) For producer milk of a cooperative association in its capacity as a handler under § 1001.9(d) moved to a pool plant, the zone location of the plant to which the milk was moved;

(c) For milk of a cooperative association in its capacity as a handler under § 1001.9(d) in shrinkage, overage, extraordinary loss, and ending inventory, the zone location of the pool plant, or pool plants within the same zone, to which the greatest aggregate quantity of such milk of the cooperative association was moved during the current month or the most recent month;

(d) For beginning inventory of a cooperative association in its capacity as a handler under § 1001.9(d), the zone location at which the milk was priced as ending inventory during the previous month;

(e) For receipts of pool milk other than producer milk from plants, the zone location of the plant from which it was received;

(f) For receipts assigned to Class I milk under §§ 1001.45 (e) and (f) and 1001.47 (f), the zone location of the plant from which the product was received; and

(g) For any excess of beginning inventory assigned to Class I milk under § 1001.45(d) over the quantities of producer milk and of milk from cooperative associations in their capacity as handlers under § 1001.9(d) assigned to Class II milk in the preceding month, the zone location of the pool plants from which an equivalent quantity of receipts of fluid milk products were assigned to Class II milk in the preceding month in sequence beginning with the plant in the zone nearest to Boston.

§ 1001.54 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month and the Class II price for the preceding month.

§ 1001.55 Equivalent price.

If, for any reason, a price specified in this part for use in computing class prices or for other purposes is not reported or published in the manner described in this part, the market administrator shall use one determined by the Secretary to be equivalent to the price that is specified.

BLENDED PRICE

§ 1001.60 Computation of value of fluid milk products at class prices.

For each month, the market administrator shall compute, as specified in this section, the value of fluid milk products at class prices, at each plant other than the plant of a producer-handler under any Federal order, and of the fluid milk products of each cooperative association in its capacity as a handler under § 1001.9 (d) which were not moved to a pool plant. The prices used shall be those for the applicable zone locations as determined under § 1001.53.

(a) Multiply by the applicable class prices the quantities of:

(1) Producer milk assigned under § 1001.47 (a) and (b) except that for any cooperative association in its capacity as a handler under § 1001.9(d) the quantity of producer milk shall be reduced by the total quantity of milk moved to pool plants during the month, to the limit of the quantity of producer milk;

(2) Pool milk other than producer milk assigned under §§ 1001.45 (g) and (h) and 1001.47(d); and

(3) Milk received at a pool plant from a cooperative association in its capacity as a handler under § 1001.9(d) and assigned under § 1001.47 (a) and (b).

(b) Multiply by the applicable Class I prices the quantities of:

(1) Product assigned to Class I milk under §§ 1001.44(d) and 1001.45(a) through (c);

(2) Product assigned to Class I milk under § 1001.45(d), except that for any cooperative association in its capacity as a handler under § 1001.9(d) the quantity shall be reduced by the quantity of any excess of milk moved to pool plants during the month over the quantity of producer milk, to the limit of the quantity assigned to Class I milk under § 1001.45 (d);

(3) Product assigned to Class I milk under §§ 1001.45(e) and (f) and 1001.47 (f); and

(4) Filled milk not proved to have been made from other fresh fluid milk products assigned to Class I milk under § 1001.45(g) and (h).

(c) If the total quantity of skim milk or butterfat classified as Class I milk or Class II milk under §§ 1001.40 through 1001.42 exceeds the total quantity of skim milk or butterfat, respectively, assigned to that class under §§ 1001.43 through 1001.47, multiply the excess (overage) by the applicable class price, adjusted by the butterfat differential.

(d) Multiply by the applicable Class I price the quantities of:

(1) Pool milk distributed as route disposition in the marketing area from the handler's nonpool plant; and

(2) Filled milk distributed as route disposition in the marketing area from the handler's nonpool plant which is excluded from pool milk only because it is not proved to have been made from other fresh fluid milk products.

(e) Multiply by the applicable Class II prices the quantities of:

(1) Product assigned to Class I milk under § 1001.45(a) through (c);

(2) Product assigned to Class I milk under §§ 1001.45(e) and (f) and 1001.47 (f); and

(3) Product for which a value is determined under paragraphs (b)(4) and (d)(2) of this section.

(f) Multiply by the applicable Class I price for the preceding month the product assigned to Class I milk under § 1001.44(d).

(g) Multiply by the applicable Class II price for the preceding month the quantity of product for which a value is determined under paragraph (b)(2) of this section.

(h) For any cooperative association in its capacity as a handler under § 1001.9 (d), multiply by the applicable Class II price for the preceding month the quantity of any excess of milk moved to pool plants during the month over the quantity of producer milk, to the limit of the quantity of milk in its inventory at the beginning of the month.

(i) Add together the amounts obtained under paragraphs (a) through (d) of this section and subtract therefrom the sum of the amounts obtained under paragraphs (e) through (h) of this section.

§ 1001.61 Computation of basic blended price.

The basic blended price per hundredweight of pool milk containing 3.5 percent butterfat, applicable to plants located in zone 21, shall be computed for each month as specified in this section.

(a) Combine into one total the respective values of fluid milk products at class prices computed under § 1001.60 for each handler from whom the market administrator has received at his office prior to the 11th day after the end of the month the reports for the month prescribed in § 1001.30 and the payment for the preceding month required under § 1001.72(a).

(b) Deduct the amount of the plus adjustments, and add the amount of the minus adjustments, that are applicable under §§ 1001.52 and 1001.53.

(c) Subtract for each of the months of March, April, May, and June an amount computed by multiplying the total hundredweight of pool milk included in these computations by 20 cents in March, 30 cents in April, and 40 cents in May and June.

(d) Add for the months of August, September, and October an amount representing 25 percent, 30 percent, and 30 percent, respectively, of the aggregate amount subtracted under paragraph (c) of this section for the prior period of March–June, and for November add the remainder of the amount subtracted under such paragraph (c) and the interest earned on the aggregate fund.

(e) Add an amount equal to not less than one-half of the unobligated balance of the producer-settlement fund as at the close of business on the 10th day after the end of the month.

(f) Divide the resulting amount by the total hundredweight of pool milk for which a value is included under paragraph (a) of this section.

(g) Subtract not less than 4 cents nor more than 5 cents for the purpose of retaining a cash balance in the producer-settlement fund.

§ 1001.62 Announcement of blended prices and butterfat differential.

The market administrator shall announce publicly on or before:

(a) The 5th day after the end of each month the butterfat differential for such month; and

(b) The 13th day after the end of each month the zone blended prices resulting from the adjustment of the basic blended price for such month, as computed under § 1001.61, by the location adjustments set forth in § 1001.52.

Payments for Milk

§ 1001.70 Producer-settlement fund.

(a) The market administrator shall establish and maintain a separate fund known as the "producer-settlement fund." He shall deposit into the fund all amounts received from handlers under §§ 1001.72, 1001.77, and 1001.78 and the amount subtracted under § 1001.61(c). He shall pay from the fund all amounts due handlers under §§ 1001.72, 1001.77, and 1001.78 and the amount added under § 1001.61(d), subject to his right to offset any amounts due from the handler under these sections and under §§ 1001.85 and 1001.86.

(b) All amounts subtracted under § 1001.61(c), including interest earned thereon, shall remain in the producer-settlement fund as an obligated balance until it is withdrawn for the purpose of effectuating § 1001.61(d).

(c) The market administrator shall place all monies subtracted under § 1001.61(c) in an interest-bearing bank account or accounts in a bank or banks duly approved as a Federal depository for such monies, or invest them in short-term U.S. Government securities.

§ 1001.71 Handlers' producer-settlement fund debits and credits.

On or before the 15th day after the end of the month, the market administrator shall render a statement to each handler showing the amount of the handler's producer-settlement fund debit or credit, as calculated in this section.

(a) The producer-settlement fund debit or credit for each plant and each cooperative association in its capacity as a handler under § 1001.9(d) shall be computed as specified in this paragraph.

(1) Multiply the quantities of pool milk and the quantities of fluid milk products received at the pool plant from cooperative associations in their capacity as handlers under § 1001.9(d) by the basic blended price computed under § 1001.61 adjusted by any location adjustments applicable under §§ 1001.52 and 1001.53.

(2) For any cooperative association in its capacity as a handler under § 1001.9 (d), multiply the quantities of milk moved to each pool plant by the basic blended price computed under § 1001.61 adjusted by any location adjustments applicable under §§ 1001.52 and 1001.53; and to the result add the value determined under § 1001.60.

(3) If the value of fluid milk products, as determined under § 1001.60 for any plant, or as determined under paragraph (a)(2) of this section for any cooperative association in its capacity as a handler under § 1001.9(d), is greater than the credit as determined under paragraph (a)(1) of this section, the difference shall be the producer-settlement fund debit for the plant or the cooperative association in its capacity as a handler under § 1001.9(d).

(4) If the value of fluid milk products, as determined under § 1001.60 for any plant, or as determined under paragraph (a)(2) of this section for any cooperative association in its capacity as a handler under § 1001.9(d), is less than the credit as determined under paragraph (a)(1) of this section, the difference shall be the producer-settlement fund credit for the plant or the cooperative association in its capacity as a handler under § 1001.9(d).

(b) The producer-settlement fund debit or credit of any handler shall be the net of the producer-settlement fund debits and credits as computed for all of its operations under paragraph (a) of this section.

§ 1001.72 Payments to and from the producer-settlement fund.

(a) On or before the 18th day after the end of the month, each handler shall pay to the market administrator the handler's producer-settlement fund debit for the month as determined under § 1001.71.

(b) On or before the 20th day after the end of the month, the market administrator shall pay to each handler the handler's producer-settlement fund credit for the month as determined under § 1001.71. If the unobligated balance in the producer-settlement fund is insufficient to make such payments, the market administrator shall reduce uniformly such payments and shall complete them as soon as the funds are available.

§ 1001.73 Payments to producers.

(a) On or before the 5th day after the end of the month, each handler shall pay each producer for milk received from him during the first 15 days of the month at a rate that is not less than the zone 21 Class II price for the preceding month.

(b) On or before the 20th day after the end of the month, each handler shall make final payment to each producer for the total value of milk received from him during the month at not less than the basic blended price per hundredweight computed under § 1001.61, adjusted by the location adjustment applicable under §§ 1001.52 and 1001.53 and the butterfat differential applicable under § 1001.76, minus the amount of the payment made to the producer under paragraph (a) of

this section. If the handler has not received full payment from the market administrator under § 1001.72(b) by the date payments are due under this paragraph, he may reduce pro rata his payments to producers by an amount not to exceed such underpayment. Such payments shall be completed after receipt of the balance due from the market administrator by the next following date for making payments under this paragraph.

(c) If the handler's net payment to a producer is for an amount less than the total amount due the producer under this section, the burden shall rest upon the handler to prove to the market administrator that each deduction from the total amount due is properly authorized and properly chargeable to the producer.

(d) In making payment to producers under paragraph (b) of this section for milk diverted from a pool plant to a plant at which a lower blended price would apply under this order, the handler may elect to pay such producers at the price applicable at the zone location of the plant from which the milk was diverted, if the resulting net payment to each producer is not less than that otherwise required under this section and the rate of payment and the deductions shown on the statement required to be furnished under § 1001.75 are those used in computing the payment.

§ 1001.74 Payments to cooperative associations.

(a) Each cooperative association may file with a handler who is not a cooperative association a claim either for the payments that the handler is required to make to the association's producer members under §1001.73 or for authorized deductions from such payments. The claim shall contain a list of the producers to whom the payments are due or to whom the deductions apply, an agreement to indemnify the handler in the making of such payments or deductions, and a certification that the association has for each producer listed an unterminated membership contract authorizing the payment or deduction.

(b) The handler shall withhold from the association's producer members the payments or the deductions specified in paragraph (a) of this section in accordance with the association's claim. He shall pay the amounts withheld to the association on or before the dates on which such amounts otherwise would have been due to the producer members under § 1001.73.

(c) For each producer member from whom payment was withheld, the handler shall furnish the association a supporting statement showing the information required to be furnished to the producer under § 1001.75. Such information with respect to milk received during the first 15 days of the month shall be furnished not later than the 27th day of the month and with respect to milk received during the remainder of the month not later than the 12th day of the following month. For each producer member from whom a deduction is made under this section, the handler shall furnish the association a statement showing the pounds of milk received.

(d) Each handler who receives fluid milk products at his plant from a cooperative association in its capacity as the operator of a pool plant or in its capacity as a handler under § 1001.9(d) shall make payment to the association for such receipts as follows:

(1) On or before the 5th day after the end of the month, for the fluid milk products received from the association during the first 15 days of the month at a rate that is not less than the zone 21 Class II price for the preceding month. The payment made to the association under this subparagraph shall constitute partial payment of the total amount required to be paid under this paragraph.

(2) On or before the 20th day after the end of the month, for not less than the total value of fluid milk products received from the association's pool plants, as determined by multiplying the respective quantities assigned to each class under §§ 1001.44 and 1001.47 by the class price for the month, adjusted by the location adjustments applicable under §§ 1001.52 and 1001.53 and the butterfat differential applicable under § 1001.76, minus the amount of the payment made to the association under paragraph (d)(1) of this section.

(3) On or before the 20th day after the end of the month, for not less than the total value of milk received from the cooperative association in its capacity as a handler under § 1001.9(d), at the basic blended price per hundredweight for the month computed under § 1001.61, adjusted by the location adjustment applicable under §§ 1001.52 and 1001.53 and the butterfat differential applicable under § 1001.76, minus the amount of the payment made to the association under paragraph (d)(1) of this section. If the handler has not received full payment from the market administrator under § 1001.72(b) by the date payment is due under this subparagraph, he may reduce his payment to the association by an amount not to exceed such underpayment. Such payment shall be completed after receipt of the balance due from the market administrator by the next following date for making payment under this subparagraph.

§ 1001.75 Statements to producers.

In making the payments to producers required under § 1001.73, each handler shall furnish each producer with a supporting statement, in such form that it may be retained by the producer, which shall show:

(a) The month and the identity of the handler and of the producer;

(b) The pounds and butterfat test of milk that is received from the producer, or if more than one minimum rate of payment is applicable to the producer's milk under § 1001.73, the respective pounds and test to which each minimum rate of payment applies;

(c) The minimum rate or rates, including the butterfat differential, at which payment to the producer is required under § 1001.73;

(d) The rate that is used in making the payment, if such rate is other than the applicable minimum rate;

(e) The amount or the rate per hundredweight of each deduction claimed by the handler, including any deductions claimed under §§ 1001.74 and 1001.86, together with a description of the respective deductions; and

(f) The net amount of payment to the producer.

§ 1001.76 Butterfat differential.

(a) In making the payments to producers required under § 1001.73 and the payments to cooperative associations required under § 1001.74(d), each handler shall add for each one-tenth of one percent of average butterfat content above 3.5 percent, or may deduct for each one-tenth of one percent of average butterfat content below 3.5 percent, as a butterfat differential, an amount per hundredweight that shall be computed by the market administrator under paragraph (b) of this section.

(b) Multiply by 0.115 and round to the nearest one-tenth cent the simple average of the daily wholesale selling prices (using the midpoint of any price range as one price) per pound of Grade A (92-score) bulk creamery butter at Chicago, as reported by the Department for the month.

§ 1001.77 Adjustment of accounts.

(a) Whenever the market administrator's verification of a handler's reports or payments discloses an error in payments to or from the market administrator under §§ 1001.72, 1001.85, or 1001.86, the market administrator shall promptly issue to the handler a charge bill or a credit, as the case may be, for the amount of the error. Adjustment charge bills issued during the period beginning with the 11th day of the prior month and ending with the 10th day of the current month shall be payable by the handler to the market administrator on or before the 18th day of the current month. Adjustment credits issued during that period shall be payable by the market administrator to the handler on or before the 20th day of the current month.

(b) Whenever the market administrator's verification of a handler's payments discloses payment to a producer or a cooperative association of an amount less than is required by §§ 1001.73 and 1001.74, the handler shall make payment of the balance due the producer or the cooperative association not later than the 20th day after the end of the month in which the handler is notified of the deficiency.

§ 1001.78 Charges on overdue accounts.

Any producer-settlement fund account balance due from or to a handler under §§ 1001.72, 1001.77, or 1001.78, for which remittance has not been received in or paid from the market administrator's office by the close of business on the 20th day of any month, shall be increased one percent effective the following day. Any remittance received by the market administrator after the 20th day of any

month in an envelope that is postmarked not later than the 18th day of the month shall be considered to have been received by the 20th day of that month.

ADMINISTRATIVE ASSESSMENT AND MARKETING SERVICE DEDUCTION

§ 1001.85 Assessment for order administration.

On or before the 18th day after the end of the month, each handler shall pay to the market administrator his pro rata share of the expense of administration of this order. The payment shall be at the rate of 4 cents per hundredweight, or such lesser rate as the Secretary may prescribe. The payment shall apply to:

(a) All of a handler's receipts at pool plants during the month of fluid milk products from all sources, except receipts from pool plants, receipts from regulated plants or pool bulk tank units under other Federal orders if such receipts were subject to an administrative expense assessment under the other order, and receipts of exempt milk processed at plants other than pool plants;

(b) All receipts and beginning inventory of a cooperative association in its capacity as a handler under § 1001.9(d) for the month less its disposition to pool plants and ending inventory for the month; and

(c) The quantity distributed as route disposition in the marketing area from a handler's nonpool plant for which a value is determined under § 1001.60(d).

§ 1001.86 Deduction for marketing services.

(a) In making the payments required by § 1001.73 to producers, other than himself and any producer who is a member of a cooperative association that the Secretary determines is performing the services specified in this section, each handler shall deduct 3 cents per hundredweight, or such lesser rate as the Secretary shall determine to be sufficient, for marketing services. The handler shall pay the amount deducted to the market administrator or or before the 18th day after the end of the month.

(b) The market administrator shall expend amounts received under paragraph (a) of this section only in providing for market information to such producers and for verification of weights, samples, and tests of milk received from them. The market administrator may contract with a cooperative association for the furnishing of the whole or any part of these services.

Order[1] amending the order, regulating the handling of milk in the New York-New Jersey marketing area.

FINDINGS AND DETERMINATIONS

The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of the aforesaid order and of the previously issued amendments thereto; and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) *Findings.* A public hearing was held upon certain proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the New York-New Jersey marketing area. The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice and procedure (7 CFR Part 900).

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said order as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the said marketing area, and the minimum prices specified in the order as hereby amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(3) The said order as hereby amended regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in, a marketing agreement upon which a hearing has been held.

Order relative to handling. It is therefore ordered that on and after the effective date hereof the handling of milk in the New York-New Jersey marketing area shall be in conformity to and in compliance with the terms and conditions of the order, as amended and as hereby amended, as follows:

The provision of the proposed marketing agreement and order amending the order contained in the recommended decision issued by the Administrator on September 30, 1975 and published in the FEDERAL REGISTER on October 8, 1975 (40 FR 47316), shall be and are the terms and provisions of this order, amending the order, and are set forth in full herein:

PART 1002—MILK IN NEW YORK-NEW JERSEY MARKETING AREA

§ 1002.14 [Amended]

1. In § 1002.14, paragraph (b) is revoked.

2. In § 1002.28, paragraph (f) is revised as follows:

§ 1002.28 Temporary pool plants.

* * * * *

(f) A plant shall not be a pool plant on the basis of this section for the periods and under the conditions set forth in subparagraphs (1) and (2) of this paragraph:

(1) If the pool plant designation was canceled on the first of August, September, October, or November pursuant to § 1002.27(a), for the period through November 30 except as specified in paragraph (e) of this section.

(2) If the pool plant designation was canceled pursuant to § 1002.27 for failure to meet the requirements of § 1002.26 (a), for the period from the date the cancellation was effective through the following June 30.

(3) [Revoked]

* * * * *

§ 1002.29 [Amended]

3. In § 1002.29, the proviso of paragraph (a) is revoked.

§ 1002.45 [Amended]

4. In § 1002.45(a), subparagraph (9) is revoked.

5. In § 1002.45(a)(12), the reference "(9)" is revoked.

§ 1002.50a [Amended]

6. In § 1002.50a, the reference "1002.52" in the introductory text is revoked.

§ 1002.52 [Removed]

7. Section 1002.52 is revoked.

§ 1002.70 [Amended]

8. In § 1002.70(d), the reference "(6)" in the introductory text is changed to "(4)" and subparagraph (5) is revoked.

PART 1015 [RESERVED]

1. Part 1015 is removed and reserved.

UNITED STATES DEPARTMENT OF AGRICULTURE
AGRICULTURAL MARKETING SERVICE

MARKETING AGREEMENT REGULATING THE HANDLING OF MILK IN THE NEW ENGLAND MARKETING AREA

The parties hereto, in order to effectuate the declared policy of the Act, and in accordance with the rules of practice and procedures effective thereunder (7 CFR Part 900), desire to enter into this marketing agreement and do hereby agree that the provisions referred to in paragraph I hereof as augmented by the provisions specified in paragraph II hereof, shall be and are the provisions of this marketing agreement as if set out in full herein.

I. The findings and determinations, order relative to handling, and the provisions of §§ 1001.1 to 1001.86, all inclusive, of the order regulating the handling of milk in the New England marketing area, which is annexed hereto; and

II. The following provisions:

§ 1001.87 *Record of milk handled and authorization to correct typographical errors.*

(a) *Record of milk handled.* The undersigned certifies that he handled during the month of September 1975, ---------- hundredweight of milk covered by this marketing agreement.

(b) *Authorization to correct typographical errors.* The undersigned hereby authorizes the Director, or Acting Director, Dairy Division, Agricultural Marketing Service, to correct any typographical errors which may have been made in this marketing agreement.

§ 1001.88 *Effective date.* This marketing agreement shall become effective upon the execution of a counterpart hereof by the

[1] This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

Secretary in accordance with § 900.14(a) of the aforesaid rules of practice and procedure.

IN WITNESS WHEREOF, The contracting handlers, acting under the provisions of the Act, for the purposes and subject to the limitations herein contained and not otherwise, have hereunto set their respective hands and seals.

[SEAL] _____
(Signature)
by _____
Name Title
_____
(Address)
Attest _____
Date _____

UNITED STATES DEPARTMENT OF AGRICULTURE
AGRICULTURAL MARKETING SERVICE

MARKETING AGREEMENT REGULATING THE HANDLING OF MILK IN THE NEW YORK-NEW JERSEY AREA

The parties hereto, in order to effectuate the declared policy of the Act, and in accordance with the rules of practice and procedure effective thereunder (7 CFR Part 900), desire to enter into this marketing agreement and do hereby agree that the provisions referred to in paragraph I hereof as augmented by the provisions specified in paragraph II hereof, shall be and are provisions of this marketing agreement as if set out in full herein.

I. The findings and determinations, order relative to handling, and the provisions of §§ 1002.1 to 1002.90, all inclusive, of the order regulating the handling of milk in the New York-New Jersey marketing area which is annexed hereto; and

II. The following provisions:

§ 1002.91 *Record of milk handled and authorization to correct typographical errors.*

(a) *Record of milk handled.* The undersigned certifies that he handled during the month of September 1975, _____ hundredweight of milk covered by this marketing agreement.

(b) *Authorization to correct typographical errors.* The undersigned hereby authorizes the Director, or Acting Director, Dairy Division, Agricultural Marketing Service, to correct any typographical errors which may have been made in this marketing agreement.

§ 1002.92 *Effective date.* This marketing agreement shall become effective upon the execution of a counterpart hereof by the Secretary in accordance with § 900.14(a) of the aforesaid rules of practice and procedure.

IN WITNESS WHEREOF, The contracting handlers, acting under the provisions of the Act, for the purposes and subject to the limitations herein contained and not otherwise, have hereunto set their respective hands and seals.

[SEAL] _____
(Signature)
by _____
(Name) (Title)
_____
(Address)
Attest _____
Date _____

[FR Doc.76-2564 Filed 1-28-76;8:45 am]